

**IN THE UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE FIELD OFFICE**

CLAUDIA RAUSCH,	)	EEOC NO. 531-2022-00289X
	)	
COMPLAINANT,	)	AGENCY NO. HHS-HRSA-0061-2022
v.	)	
	)	
XAVIER BECERRA	)	ADMINISTRATIVE JUDGE
SECRETARY	)	
UNITED STATES DEPARTMENT OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	AUGUST 28, 2022
AGENCY.	)	

COMPLAINANT’S MOTION TO AMEND

Pursuant to 29 C.F.R. §1614.106(d), Federal Rule of Civil Procedure 15, and The Equal Employment Opportunity Commission (“Commission”)’s Management Directive 110 (“MD-110”), Complainant, Claudia Rausch, Pro Se, (“Ms. Rausch”) respectfully moves to amend her complaint to include additional claims of discrimination and retaliation on the grounds that the new claims arose from the instant complaint and are like the original claims in this instant complaint. Ms. Rausch reserves the right to supplement this motion to include additional supporting facts and full legal argument in support of this motion.

Complainant moves that the following claim(s) be added to the pending instant complaint:

1. Whether the U.S. Department of Health and Human Services (“Agency”) subjected Ms. Rausch to discrimination and a pattern of retaliatory harassment on the basis of sex (female), national origin (Mexican-American), race (Hispanic), disability (Panic attacks and anxiety, perceived or otherwise), reprisal, (protected EEO-Activity and protected opposition), when:
 - A. On July 20, 2022, the Agency characterized Complainant’s acts of protected opposition as misconduct, and charged her with “disrespectful comments to supervisors” and “failure to follow orders” through a disciplinary action. ***See Agency’s July 20, 2022 Proposed Suspension and Complainant’s August 24, 2022 reply attached.***
 - B. On July 20, 2022, the Agency Proposed to Suspend Complainant from employment for 7 Days. ***See Agency’s July 20, 2022 Proposed Suspension attached.***
 - C. From January 3, 2022 till August 7, 2022, the Agency refused to make a decision on whether to accept Complainant’s claims for investigation. ***See Agency’s August 8, 2022 Partial Amended Acceptance Letter and Complainant’s August 24, 2022 Reply.***
 - D. On August 8, 2022, the Agency fragmented and misrepresented Complainant’s claims in order to justify dismissing them. ***See Agency’s August 8, 2022 Partial Amended Acceptance Letter and Complainant’s August 24, 2022 Reply.***
 - E. During Complainant’s birthday on August 10, 2022, the Agency pressured Complainant to forgo the original evidence of Complainant’s claims that exists on her laptop. ***See August 10, 2022 emails attached.***

- F. On August 15, 2022, the Agency controlled her Complainant's computer desktop remotely to interfere with her ability to dispute and reply to the Agency's August 8, 2022 fragmentation of her claims by the deadline.
- G. On August 20, 2022, Complainant was locked out of her iCloud and apple ID accounts.
- H. On August 23, 2022, Complainant's attendance was scrutinized and stricter leave request policies were imposed on her. ***See email attached.***
- I. On August 25, 2022, the Agency suspended Complainant for 7 days because she continued to defend her acts of protected-opposition in her reply to the Agency's proposed suspension. ***See memorandum, Complainant's August 22-24, 2022 reply and email attached.***
- J. On August 26, 2022, Carolyn Nganga-Good directed Complainant to update her address on the telework agreement, after learning Complainant evacuated her home to avoid retaliatory harassment. ***See email attached.***

CONCLUSION

Ms. Rausch reserves all rights to supplement this motion with further supporting documentation and respectfully requests that this motion to amend her complaint in this instant case be granted.

Dated: August 28, 2022

Respectfully submitted,

Claudia Rausch
4938 Hampden Lane
Bethesda, MD 20814
Phone: 915-422-4583
email:claudiamarauschk@hotmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **COMPLAINANT'S MOTION TO AMEND**, was served by the methods indicated below to the individuals on August 28, 2022.

Respectfully Submitted,

Claudia Rausch
Complainant

By Electronic Mail / FEDSEP
Anthony Archeval
aarcheval@hrsa.gov

By FEDSEP
HHS Attorney of Record

By FEDSEP
Administrative Judge
Equal Employment Opportunity Commission



DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Resources and Services Administration

Bureau of Health Workforce
Division of Practitioner Data Bank
5600 Fishers Lane
Rockville, MD 20857

Memorandum

Method of Delivery: Email

AT YOUR OWN OPTION, YOU MAY FURNISH THIS NOTICE TO NTEU

Date: July 20, 2022

To: Claudia Rausch
Management Analyst

Subject: Proposed Suspension – 7 Days

From: Carolyn Nganga-Good
Policy and Disputes Branch Chief,
Division of Practitioner Data Bank, BHW

This is a proposal to suspend you from duty and pay for seven (7) calendar days from your position of Management Analyst, GS 0343-13 at the Bureau of Health Workforce (BHW), Health Resources and Services Administration (HRSA), in Rockville, Maryland, no sooner than 15 days from the date of your receipt of this notice. This action is being initiated under the provisions of Title 5, Code of Federal Regulations, Part 752, and the terms of applicable sections of the NTEU Collective Bargaining Agreement (CBA). You will be allowed an opportunity to respond to this proposal orally and/or in writing, before a final decision is made. You will remain in an active duty status during the proposal period. This proposal is necessary for your offenses of: 1) Disrespectful Comments towards Supervisor(s) and 2) Failure to Follow Instructions. The following facts support these charges:

Charge 1: Disrespectful Comments towards Supervisors

Background to Specification 1 and 2: On April 25, 2022, you sent an email communication to myself; Melissa Moore, Deputy Division Director for the National Practitioner Data Bank; David Loewenstein, Division Director for the National Practitioner

Data Bank; Manjot Singh, Deputy Director of the Division of Business Operations; Dr. Luis Padilla, Associate Administrator for the Bureau of Health Workforce; Anthony Archeval, Director of the Office of Civil Rights, Diversity and Inclusion; Cathy Ganey, Director of the Office of Human Resources; Dale Colbert, Deputy Director of the Office of Human Resources; Shontae Ali, Director of the Division of HR Operations; Wendy Kadingo, Director of the Division of Workforce Relations; Jordan Grossman, HRSA's Chief of Staff; and Carole Johnson, HRSA's Administrator. In your email you made several comments that were inappropriate and disrespectful, those comments were as follows:

Specification 1: In a section of your email you referenced a Division team building activity, an escape room event, where you accused the Division Director, David Loewenstein, of using the activity to *"attempt to covertly program me and threaten my life?"* This comment was inappropriate and disrespectful.

Specification 2: In another section of your email you stated, in part, that Director Loewenstein used the team building activity to *"Threaten to murder [you] and setup [your] friends to make it look like they did it?"* This comment was also inappropriate and disrespectful.

The comments you used in this email message were inappropriate, unprofessional and disrespectful.

Background to Specification 3: On June 1, 2022, you sent an email communication to myself; Melissa Moore, Deputy Division Director for the National Practitioner Data Bank; David Loewenstein, Division Director for the National Practitioner Data Bank; Dr. Luis Padilla, Associate Administrator for the Bureau of Health Workforce; Anthony Archeval, Director of the Office of Civil Rights, Diversity and Inclusion; Cathy Ganey, Director of the Office of Human Resources; Dale Colbert, Deputy Director of the Office of Human Resources; Shontae Ali, Director of the Division of HR Operations; Wendy Kadingo, Director of the Division of Workforce Relations; Jordan Grossman, HRSA's Chief of Staff; Diana, Espinosa, HRSA's Deputy Administrator and Carole Johnson, HRSA's Administrator. In your email, you made several comments that were inappropriate and disrespectful. The comments were as follows:

Specification 3: In a section of your email you stated in part, *"IF SOMETHING HAPPENS TO ME, during one of my visits to the HRSA building to 'return my old laptop' or other task, at the direction of your orders - rest assured, that I will make it known to appropriate parties well beforehand that you, are not only a witness to these written statements made by me, but also a suspect and accomplice."* Making these statements to your supervisor is unprofessional and disrespectful.

Background to Specification 4 and 5: On June 16, 2022, I emailed you to check on your plan for next steps with your reconsideration case. You sent me an email response where you made disrespectful comments. Those comments were as follows:

Specification 4: In a section of your email you stated, in part, *"I barely received OGC's follow-up at 5 pm yesterday, and you are babysitting my every action."* Your comment,

defining my follow up to an assignment as “babysitting” your actions was disrespectful towards your supervisor.

Specification 5: In another section of your email you stated, in part, *“I find it really sad that the one time BHW decides to promote a minority woman into a supervisory position, they give her the job that no one wants – yours”*. Your comment that my appointment to a supervisory position is “sad” and that my job is the one “no one wants” was rude, and disrespectful, especially to your supervisor.

Charge 2: Failure to Follow Instructions

Background: On January 19, 2022, HRSA Office of Information Technology (OIT) emailed HRSA staff about an upcoming HRSA equipment refresh; you were one of the recipients of this email communication. This email provided the following guidance:

“The Office of Information Technology (OIT) will replace selected HRSA-issued laptops that have reached the 4-year service life and will therefore need to be refreshed with a new Dell laptop... Upon arrival of your appointment, you will hand off your laptop to the servicing technician and in the interim, you will receive a ‘loaner’ laptop.”

Specification 1: I emailed you on April 13, 2022, the instruction that, *“In your last 4/6 email you said that your laptop refresh was to be scheduled by today. Has the refresh been completed? If not, it needs to be done the next day you are on duty.”* You reported for duty on April 15, 2022, and you did not complete your laptop refresh as instructed. Therefore, you failed to follow instructions.

Specification 2: On May 23, 2022, I emailed you the instruction that, *“I am instructing you to return your old HRSA laptop to OIT by Noon on Thursday, May 26th and let me know once the task has been completed. If you happen to be out of the office unexpectedly on May 26th, you must return your laptop the next day you are on duty.”* You reported for duty on May 26, 2022 and you failed to return your old laptop by noon on May 26, 2022 as instructed.

Specification 3: On June 6, 2022, I emailed you to check the status of your old HRSA-issued laptop’s return to HRSA OIT. You responded via email on June 8, 2022, *“No, I didn’t get a chance to. I’ll have to return it during my next in-office day.”* I responded to you via email on June 9, 2022, stating in part, *“if the laptop is not returned by COB on June 17th”* which was your next scheduled in-office day, the agency would have to take action since you were not following instructions. You called out of work on the June 17, 2022, and I sent you an email reply later that day, instructing you that *“If the laptop has not been returned, you are expected to return the laptop by COB the next day you are on duty.”*

You failed to return your old HRSA-issued laptop to HRSA’s OIT the next day you were on duty, which was June 21, 2022. Therefore, you failed to follow instructions.

Based on the above charges and specifications, I am proposing your suspension for seven (7) calendar days to promote the efficiency of the service.

Penalty Considerations

In deciding to propose this action rather than a lesser action I considered several factors:

I considered the nature and seriousness of the offense, and its relation to your duties, position and responsibilities. As a GS-13 Management Analyst in the Policy and Disputes Branch, you are responsible for demonstrating professionalism and providing timely, responsive, and respectful customer service that conform to HHS policies and general professional etiquette to all internal and external customers in order to fulfill the Agency's mission. You are also expected to use appropriate judgement in communicating sensitive information and to maintain credibility with internal and external customers to earn their trust and respect. Your conduct as noted above is concerning and impacts our working relationship and performance of our work duties. It also impacts my level of confidence that you will conduct yourself professionally when interacting with internal and external customers during difficult situations or when you do not agree with them and the impact it may have in fulfilling the Agency's mission. Your allegations of threats to your life based on team building events and requests to follow instructions and agency protocols are very serious and could negatively impact the accused. It also affects our working relationship and causes discord between you and your supervisors as well as others in the Agency. In addition, your failure to follow instructions for the proper refresh and return of your HRSA laptop expended several hours from numerous HRSA staff, to include several staff in the OIT office. The number of times you have been counselled on these issues takes away from the time we need to complete other Agency-related work. I considered the nature of your disrespectful, and unprofessional comments as well as your repeated failure to follow instructions as serious.

I considered the clarity with which you were on notice of the rules that were violated in committing the offense of your disrespectful communications and failure to follow instructions. I issued you a counseling memorandum on April 19, 2022, which clearly stated, *"You responded to my message on April 6th via email outlining your reasons for not completing the assignment which I find unacceptable. In addition to your attempt to rationalize the failure to follow my instructions and negligence in performing this task, you ultimately did not follow my instructions to complete the task by the second deadline of April 6th. Your failure to follow my instructions, lack of urgency in getting your work assignment completed on time, and disregard for the practitioners' plight to get their dispute cases resolved as fast as possible is both concerning and unacceptable. You need to improve on this with immediate effect... Your behavior with regards to failing to follow my instructions is disruptive and inappropriate."* This notice also outlined my expectation that, *"You are required to follow all supervisory instructions and must conduct yourself in a respectful manner toward your supervisor, coworkers and customers... You are expected to adhere to the HHS Standards of Conduct"*.

You were also put on notice via email by your previous supervisor Matthew Wiley in November 2019, that, *"This is not the first time you have made an inappropriate comment towards me as your supervisor... your communications towards me, and all internal and*

external staff, will be professional and respectful. You are expected to follow the HHS Standard of Conduct (which can be found on here - [OHR Link](#)) in regards to your conduct while in the office.” Despite these notices and warnings, you sent several comments to your supervisors that were completely unacceptable, displayed a level of disrespect that is inappropriate in the Federal workplace, and contravened the HHS Standards of Conduct. I considered the numerous notices you received that you must follow instructions to refresh your HRSA-issued laptop and then return your old HRSA laptop and the gravity of your continued refusal to comply. These notices were clear yet you continued with noncompliance. I considered this factor particularly aggravating and a poor use of our time

I considered mitigating factors related to the offenses outlined above. I considered your length in service as well as your positive performance record in the Federal government. Additionally, I considered the personal stress you outlined in your communications outlined above. However, these mitigating factors do not outweigh the gravity of your actions.

I considered the effect your misconduct has upon my confidence in your ability to perform assigned duties. I have lost confidence in your ability to communicate respectfully towards myself and your other supervisors as well as in your ability to follow instructions. I expect to be able to communicate with a GS-13 Analyst with a high level of professionalism and to give an instruction once with compliance. Instead, management spends inordinate time providing you instructions and expectations on refraining from inappropriate communications to no avail. Additionally, you failed to follow the instructions on a routine action, which to date has not been completed. The consequence of your disrespectful comments and failure to follow instructions, is that DPDB is constantly disrupted and I am not able to focus on urgent tasks that are necessary for the Division to support BHW’s mission.

I am proposing this action based on evidence and to promote the efficiency of the service.

The HHS table of penalties for a first offense of disrespectful comments towards supervisor and failure to follow instructions, is a letter of reprimand to removal. In imposing this lesser disciplinary penalty, I considered the number of charges and mitigating circumstances and I believe a 7 day suspension is appropriate.

This letter warns you that any further misconduct will result in more severe disciplinary action, up to and including your removal from Federal service.

Right to Make an Oral and Written Reply

The decision on the proposed suspension will be made by the Deciding Official. You will be given fourteen (14) calendar days following receipt of this notice in which to deliver an oral and/or written reply. You may elect to submit affidavits or any other evidence which you wish to have considered in support of your reply. Any response should be made directly to the Deciding Official. Consideration will be given to granting a request for additional time to respond to this proposal. To request an extension to

reply, address your written request to the Deciding Official prior to the expiration of the 14 calendar day period. Your request should indicate the specific reasons why additional time to reply is needed. If you do not respond to this proposal nor request an extension of time to submit a reply, a decision will be made based upon the evidence of record. If you submit a timely reply to this notice, a decision will not be made until full consideration is given to that reply.

The written response or request for an oral response should be directed to the Deciding Official:

Melissa Moore
Deputy Director
Division of Practitioner Data Bank
HRSA/Bureau of Health Workforce
5600 Fishers Lane,
Rockville, MD 20857
301-945-3332

You have the right to be represented in responding to this proposal, or during any part of this proceeding. If a representative is designated, please advise the Deciding Official of your designation in writing at the above address. Management may disqualify your designated representative for reasons of conflict of interest or position.

You and/or your representative have the right to review the material relied upon to support the reasons given in this proposal letter. Upon request, all material relied upon for this memorandum can be provided. You may obtain additional clarity regarding the material should you deem it necessary by contacting Kelli Lee, Labor and Employee Relations, Office of Human Resources, HRSA, during business hours, at Klee@hrsa.gov or 301-443-4622. Ms. Lee may also provide you guidance regarding the procedural aspects of this matter. You and your representative, if in an active duty status, will be granted a reasonable amount of official time to review the material relied upon in support of this proposal and to prepare a response and secure affidavits. Any request for official time should be addressed to your supervisor.

If the Agency issues a decision imposing an adverse action, such as a suspension, against you, you will have the right to appeal the adverse action in only one of the following ways. Once you have elected one of these procedures, you may not change thereafter to a different procedure:

Equal Employment Opportunity (EEO) Complaint

You may choose to file an Equal Employment Opportunity (EEO) complaint if you believe the decision in this matter was based on your race, color, religion, sex, national origin, age, physical or mental disability, genetic information and/or reprisal for prior protected EEO activity.

Filing Deadline: You must initiate contact with an HRSA Office of Equal Employment Opportunity (OEEO) counselor **within 45 days** of the effective date of the decision. Your contact can be by telephone 301-443-5636, or in writing to

Email: EEOcomplaints@hrsa.gov

Procedures: Should you elect this option, your complaint will be processed in accordance with Equal Employment Opportunity Commission (EEOC) Regulations found at Title 29 C.F.R. Part 1614

Whistleblowing reprisal complaint with the U.S. Office of Special Counsel and option of a subsequent Individual Right of Action (“IRA”) appeal to the MSPB

In the alternative, if you believe the decision is related to your prior whistleblowing activity (making protected disclosures), you have the option to file a complaint with the U.S. Office of Special Counsel (OSC). “Whistleblowing” is the disclosure of information that an individual reasonably believes shows a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety.

Filing Deadline: There is no specific time limit for filing a complaint with the OSC.

How to file a complaint: You can file by mail or facsimile using the required OSC Form 11, available at <http://www.osc.gov/documents/forms/osc11.htm>, or by using the electronic filing option on the OSC website at www.osc.gov. For mail or facsimile, you may send OSC Form 11 to the following address/number:

Complaints Examining Unit
Office of Special Counsel
1730 M Street, N.W. (Suite 218)
Washington, DC 20036-4505
Facsimile: (202) 254-3711

Procedures: Should you elect the option to file an OSC complaint, it will be processed in accordance with the regulations found at Title 5 C.F.R. Part 1209. If OSC fails to complete its review of your whistleblower reprisal allegation within 120 days after it receives your complaint, or if it closes your complaint at any time without seeking corrective action on your behalf, you will have the right to file an Individual Right of Action (IRA) appeal with the MSPB.

Important information: The scope of MSPB’s review of the action in an IRA appeal is more restricted than in a direct appeal to the Board, as outlined in Option 2, above. In an IRA appeal, the Board is limited to determining if you demonstrate that one or more whistleblowing disclosures were a contributing factor in the agency taking the action and, if so, whether the agency has demonstrated by clear and convincing evidence that it would have taken the same action in the absence of your protected disclosure(s). The Board will not consider allegations of harmful procedural error or prohibited discrimination. Furthermore, the agency is not required to prove the basis of the action or establish that it was taken “only for such cause as will promote the efficiency of the

service.” However, the Board may consider the strength of the agency’s evidence supporting the action in determining whether the agency has demonstrated by clear and convincing evidence that it would have taken the same personnel action in the absence of the protected disclosures.

Should the agency issue a decision imposing an adverse action, you may challenge the action through the negotiated grievance procedures of the HHS-NTEU Collective Bargaining Agreement. If you elect to file a grievance, the grievance must be filed, in writing within 30 calendar days from the effective date of the action at Step 3.

If you have a medical condition, which you wish the Agency to consider before reaching a final decision in this matter, you may raise it in connection with your reply. However, any such claim must be supported by medical documentation that defines the condition and establishes a causal connection between the condition and the above-described misconduct. The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. ‘Genetic information’ as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Assistance

You may wish to contact the Employee Assistance Program (EAP). Use of EAP services is voluntary, free, and confidential. The EAP can assist you with a variety of situations. You can contact them on 1-800-222-0364. They are a consultative service that is solution-focused, offering tools and strategies, referrals, and someone to talk it through.

The EAP counselors will not share information with me unless you sign a release of information. Otherwise, the EAP counselors will only confirm that you attended a meeting with them so I can account for your attendance during work hours.

I can approve duty time for you to attend EAP sessions up to an hour for each of six sessions (per issue). Please see me if you would like to request duty time to attend an EAP appointment. If you go to EAP on your own time, you are not required to notify me.

If you have a medical condition which you wish the Agency to consider before reaching a final decision in this matter, you may raise it in connection with your reply. However, any such claim must be supported by medical documentation that defines the condition and established a causal connection between the condition and the above-described misconduct.

You are requested to sign and date the acknowledgment receipt copy of this letter.
Your signature does not mean you agree or disagree with the contents of this letter; it
means that you acknowledge that you received it.

Claudia Rausch

Date

From: [Rausch, Claudia \(HRSA\)](#)
To: [Moore, Melissa \(HRSA\)](#)
Cc: [Carolyn Nganga-Good \(HRSA\) \(cnganga-good@hrsa.gov\)](#); [Loewenstein, David \(HRSA\)](#); [Padilla, Luis \(HRSA\)](#); [Johnson, Carole \(HRSA\)](#); [Ganey, Catherine \(HRSA\)](#); [Rausch, Claudia \(HRSA\)](#)
Bcc: claudiamarauschi@hotmail.com
Subject: Reply to July 20, 2022 Proposed Suspension
Date: Wednesday, August 24, 2022 5:40:00 AM
Attachments: [8-22-2022 Reply and attachmentsSIGNED.pdf](#)

Melissa,

My apologies for the delay, I was out unexpectedly on August 22 and 23rd, 2022.

My reply to the Agency's July 20, 2022 Proposed Suspension is attached.

Respectfully,

Claudia Rausch
Management Analyst
Policy and Disputes Branch
National Practitioner Data Bank
HHS | HRSA | Bureau of Health Workforce (BHW)
): 301-945-3059 | 3: clausch@hrsa.gov

BE INNOVATIVE. HAVE ACCOUNTABILITY. WORK COLLABORATIVELY.

SENT VIA EMAIL

Date: August 22, 2022

To: Melissa Moore
Deputy Director
Division of Practitioner Data Bank, BHW
Health Resources and Services Administration
U.S. Department of Health and Human Services

Subject: July 20, 2022 Proposed Suspension – 7 Days

From: Claudia Rausch
Management Analyst
Policy and Disputes Branch, DPDB

CC: Carole Johnson, HRSA Administrator
Luis Padilla, BHW Associate Administrator,
David Loewenstein, Director of DPDB
Catherine Ganey, Director of Human Resources

Dear Ms. Moore:

This letter serves as my reply to the disciplinary offenses and penalty outlined in the July 20, 2022 proposal to suspend me from duty for seven (7) calendar days from my position of Management Analyst, GS 0343-13 at the Bureau of Health Workforce (BHW), Health Resources and Services Administration (HRSA), in Rockville, Maryland. The Agency proposed the 7-day suspension based on two charges of 1. Disrespectful Comments towards Supervisors and 2. Failure to Follow Instructions.

For the reasons explained below, I maintain that the proposed suspension should not be sustained. I also reasonably believe the July 20, 2022 proposal to suspend me further evidences a pattern of retaliatory harassment against me and is done in retaliation for protected EEO-activity and perceived whistleblowing activity in violation of EEO regulations and The NO FEAR ACT. I believe a fact-finder with authority to adjudicate such claims will find that the July 20, 2022 proposed suspension further evidences pretext for discrimination, when considered with the full circumstances. To the extent that the Agency decides to proceed with suspending me from employment, I welcome the opportunity to present the facts and legal arguments in opposition to the suspension during the EEOC's administrative process and/or upcoming litigation. To the extent that the Agency and/or a fact-finder during a future adjudicative process, determines the proposed penalty is in the best interest of the Agency's mission, several legal factors weigh in favor of mitigating the proposed penalty.

I. GENERAL BACKGROUND

Before turning to the merits of the proposed disciplinary action, it's important to consider my exemplary background as an HHS employee. I have served with HHS in my current position since October 2015. I have surpassed performance expectations each and every year. ***Attached PMAP ratings.*** I've received numerous accolades and awards during my tenure at HHS. At no point in my career at the Agency, or during the situation in question, did I purposely engage in actionable misconduct. I have always demonstrated a high degree of trust, ethics, and responsibility in my employment. I have always been an honest, dedicated employee committed to serving those in need and get along well with other fellow employees. My federal employment record of 12 years, evidences this consistent pattern of superb performance and conduct. ***See PMAPS.***

Pertinent to the matter, is the history of my EEO-activity that began in May of 2019, and a request I made for a reasonable accommodation in March of 2020, for panic attacks I began experiencing at the Agency building. ***See Dr. Durrani's progress notes and RA Request and denial attached.*** I began experiencing increased anxiety and panic attacks on or around December of 2019, after my former supervisor, Matt Wiley refused to separate me from a harassing coworker and the Agency's office of Labor and Employee Relations ("LER") refused to further investigate my December 2019 allegations of harassment, despite my escalation of the matter to my fourth-level supervisor, Luis Padilla. ***See November 25, 2019 to January 8, 2020 emails.*** In conjunction with these events, I had no option but to pursue an EEO complaint beginning August 2019, after my concerns were met with inaction by the Agency, even though the LER acknowledged other employees had corroborated my claims of harassment during a June 2019 administrative investigation. ***See June 2019 memo from LER to Matt Wiley.*** I was a top performer at the time, and my ability to focus on my work became disrupted after having to pursue an EEO complaint and defend myself against retaliation. ***See November emails to and from Matt Wiley and January 2020 to and from LER.)*** The testimony of four additional women and two Hispanic employees during the follow-up August 2021 EEOC Hearing into this matter corroborated my allegations about the discriminatory harassment I had experienced from David Horowitz, on the basis of sex and national origin. ***See statements from Megan Martin, Sheena Gaskill, Paul Lotterer, Don Illich, and Karen Foster-Wright.***

My experience of anxiety and panic attacks was a direct result of the Agency's failure to act on my claims of harassment. After opposing several incidents of retaliation during spring of 2020, Melissa Moore, DPDB Deputy Director, refused to engage in discussions with me regarding my need for a reasonable accommodation ("RA"). The Agency denied it my request for a reasonable accommodation on April 24, 2020, despite that there was evidence of an effective reasonable accommodation, since I had experienced a decrease in panic attack symptoms while working from home during the temporary Agency-wide 100% telework policy due to the pandemic. Since the April 24, 2020 denial of the RA, I have argued that it was justified through an illegitimate, misrepresented medical review from the Office of Federal Occupational Health ("FOH"). ***See attached.*** The supervisors who are aware of these events include, but are not limited to, Carolyn Nganga-Good, Melissa Moore, David Loewenstein, and Luis Padilla. ***See attached April 27, 2021 email from C. Rausch.*** Accordingly, the Agency has been on notice that I have needed a reasonable accommodation for panic attacks and anxiety. To date, no one at the

Agency has rebutted, denied, nor provided a legal argument that disputes my allegations and the supportive facts, that the April 24, 2020 denial of the RA was justified through an illegitimate and misrepresented medical review. In fact, the Agency withdrew the physician as a witness, who provided the misrepresented medical review, for the August 2021 EEOC Hearing, following my allegations. Visibly, the Agency does not have admissible evidence nor a firsthand witness that can demonstrate that the Agency's reason for denying the reasonable accommodation is legitimate. On April 27, 2021 the Agency was placed on notice by me regarding my allegations of retaliatory surveillance and a blackmail message that Dr. Anastasia Timothy and I received. See ***attached April 27, 2021 email from C. Rausch***. The agency's EEO office refused to investigate the allegations of the blackmail message during the investigation into Dr. Timothy's EEO complaint. For all the forgoing reasons, the Agency's proposed suspension should not be sustained.

II. DISCUSSION

A. Burden of Proof for MSPB

According to 5 C.F.R. Part 752, an Agency may take a disciplinary action against an employee if it promotes the efficiency of the federal service. To sustain this burden, the Agency must prove that the actions alleged against me occurred as specifically charged in the Notice of Proposed Suspension. The Agency has not met this Burden of Proof requirement.

B. Burden of Proof for EEOC

As I am alleging that the proposed suspension is done in retaliation for protected-EEO activity, the Agency has additional burden of proof to meet under the EEOC's jurisdiction as further explained.

Per the EEOC, "An employee is engaged in protected activity if [s]he has opposed any practice made unlawful by Title VII." *Rice v. Department of Health and Human Services*, 01830492, 1211/E4 (1984). The standing requirement in reprisal complaints also is referred to as the "adverse action" requirement. The Commission's present view of the adverse treatment requirement is summed up in *Pflanz v. Secretary of Homeland Security*, 01A55645 (2006):

Regarding complainant's claim of reprisal, the Commission has stated that adverse actions need not qualify as "ultimate employment actions" or materially affect the terms and conditions of employment to constitute retaliation. *Lindsey v. United States Postal Service*, EEOC Request No. 05980410 (Nov. 4, 1999) (citing EEOC Compliance Manual, No. 915.003 (May 20, 1998)). Instead, the statutory retaliation clauses prohibit any adverse treatment that is based upon a retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity. *Id.*

With regard to harassment to include retaliatory harassment, an employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. When no tangible employment action is taken, a defending employer may raise an affirmative defense to

liability or damages, subject to proof by a preponderance of the evidence, see Fed. Rule. Civ. Proc. 8(c). The defense comprises two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. No affirmative defense is available, however, when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment. Whether the alleged harassment is being carried out by a supervisor or coworker, the Commission requires that an agency take prompt and effective corrective action in order to avoid liability. The Commission has made no distinction between cases involving harassment by a supervisor or coworker when it comes to evaluating whether an agency's actions were prompt and effective. Stephani G. v. Postmaster General, 0120142877 (2016).

The EEOC has adopted the analytical formula set forth in McDonnell Douglas v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed.2d 668 (1973) for circumstantial evidence cases. The agency's burden of producing a legitimate, nondiscriminatory reason for taking an employment action is not onerous, yet it is a burden that must be satisfied through the introduction of evidence that gives sufficient details as to its reasons to permit the complainant a chance to rebut those reasons. When there exists direct evidence of discriminatory intent, if believed by the trier of fact, this resolves the ultimate issue of discrimination. The burden then shifts to the agency to prove by a preponderance of the evidence that the adverse action would have occurred even absent discrimination. See Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S. Ct. 1775, 104 L. Ed.2d 268 (1989); Privette v. Department of Housing and Urban Development, 01832650, 1278/C13 (1985).

The EEOC independently reviews cases that invoke matters within MSPB jurisdiction with actions that are not within MSPB jurisdiction, such as employment actions taken in response for failure to follow instructions that were allegedly rooted in retaliatory animus. In Barnett v. Postmaster General, 0120093400 (2010), the Commission noted that if an order given by the supervisor is retaliatory, then it is difficult to see how the agency could demonstrate that it would have taken an adverse employment action, such as removal of the employee even absent retaliation. In Graham v. Secretary of Army, 0720120039 (2013), the Commission found that the complainant was aggrieved by a discriminatory work order even when the complainant did not carry out the order. The Commission in Graham rejected the administrative judge's finding that the complainant had suffered no harm from the discrimination because she never complied with order: "We note that just because Complainant and the other Cashier refused to follow the supervisor's orders because they thought the orders were discriminatory does not make the supervisor's orders any less adverse or any less discriminatory."

An agency is entitled to rely on its regulations and policies only to the extent they do not have a discriminatory effect or are not applied in a discriminatory fashion. An agency's reliance solely on the language of regulation or policy and the mere assertion that the employee has failed to comply with the stated requirements does not satisfy an Agency's burden of providing a legitimate, nondiscriminatory reason for its treatment of a complainant, when an employee alleges disparate treatment and satisfies a prima facie case of discrimination. Marcum v. USPS, 01852764, 1598/B3 (1987). The fact that a regulation is facially legitimate does not preclude a

finding that the regulation is applied in a discriminatory or retaliatory fashion. See Moore v. Postmaster General, 01922046, 3519/C1 (1992). The agency's demand for the complainant's resignation and, when she refused, her termination were deemed retaliatory when they occurred subsequent to the Complainant's EEO-activity.

When an agency asserts that it has made a decision in its own "best interests," it must be prepared to demonstrate those interests through the introduction of admissible evidence. Richards v. Department of Defense Dependent Schools, 01851725, 1525/E4 (1987). The agency must explain specifically why the decision serves its best interests in order to sustain its burden of production. The EEOC may consider the agency's best interest in the context of making a determination on the issue of pretext and will examine the record as a whole. "[A] blanket statement about the needs of the service was an insufficient reason" to sustain an agency's burden of production and can evidence pretext for discrimination. Brooks-Coleman v. Postmaster General, 05930681, 4077/E11 (1994). An employee's past disciplinary record in deciding the appropriate penalty for a present offense and evidence of past discipline can be offered in support of the agency's legitimate reason for its action. See Murphy v. USPS, 01831882, 1079/B2 (1984).

When the agency seeks to advance its legitimate reason by proving the charges against the employee, the employee can demonstrate pretext by establishing that the agency knew satisfactory performance was impossible. In Daniels v. Department of Army, 03840050, 1579/A2 (1987), the employee was removed for unacceptable performance. The Commission found that in order for petitioner to perform his job efficiently, he needed an adequate work environment and sufficient staff to carry out the functions of his section." Id. The Commission ruled that the Agency's removal of Complainant for unacceptable performance established pretext.

The EEOC has also held that even where the complainant's behavior would otherwise provide a legitimate, nondiscriminatory reasons for an agency's actions, it does not do so where the behavior is a natural consequence of the discrimination. In Bryant v. Secretary of Interior, 0120091468 (2012), as a result of the continued harassment and failure of the agency to respond, the complainant displayed emotional distress at work, cried at the office, missed some meetings, and became withdrawn from coworkers. The agency suspended the complainant's law enforcement commission and recommended a psychiatric examination. The EEOC in Bryant determined:

"... the harassment of Complainant is inextricably linked to the Agency's decision to revoke her law enforcement commission. Complainant's reaction to the harassment (crying, absences, and withdrawal from co-workers) was reasonable and foreseeable because the Agency's inaction created the circumstances that led to her emotional distress. Therefore, we find that the suspension of Complainant's law enforcement commission and October 2007 psychiatric Independent Medical Examination (IME) were the proximate result of the racial harassment, neither of which would have occurred but for the Agency's failure to take prompt and effective remedial action when Complainant reported the harassment. Consequently, the Agency cannot rely on Complainant's reasonable reaction to racial harassment as a legitimate reason for suspending her law enforcement commission or subjecting her to the IME. See Fonda-Wall v. Dep't of

Justice, EEOC Appeal 0720060035 (July 28, 2009) (agency's reliance on the suspension of security clearance to justify subsequent actions taken against complainant not legitimate because initiation of suspension of security clearance was discriminatory). As such, the Agency must remedy all consequences of its failure to properly respond to the racial harassment to which Complainant was subjected, including the suspension of her commission and the October 2007 IME."

Suspending or limiting access to an internal grievance procedure also constitutes an "adverse action." For example, in EEOC v. Board of Governors of State Colleges & Universities, a university's collective bargaining agreement provided for a specific internal grievance procedure leading to arbitration. The agreement further provided that this procedure could be terminated if the employee sought resolution in any other forum, such as the EEOC. The Seventh Circuit ruled that termination of the grievance process constituted an adverse employment action in violation of the anti-retaliation clause of the ADEA.

In cases involving harassment, to include retaliatory harassment, the Commission has held that it becomes foreseeable that an individual may react in a threatening or violent manner, and recognized that such a reaction may be justified in certain circumstances. In a case involving issues of both harassment and disability discrimination, the Commission left intact a decision by the MSPB to mitigate a removal to a suspension for a victim of harassment. See Colon v. Secretary of Navy, 03930153, 3962/B2 (1994). The Commission reviewed a final decision by the MSPB that found the harassment constituted provocation of the appellant's actions and warranted mitigation of the penalty. In Kent v. National Guard Bureau, 01841086, 1473/A3 (1986), the Commission determined that it was pretext for the agency to terminate an employee for having an improper attitude when the problems were nonexistent until the employee filed her original complaint of sexual harassment. See also Ceralde v. USPS, 01852352, 1878/A3 (1988) (finding agency's failure to respond to continued charges of harassment by a coworker was in retaliation for a previous EEO complaint).

Where an agency fails to properly investigate a claim of harassment and, instead, investigates and disciplines the accuser for improper behavior, this constitutes retaliation. In Hendley v. Attorney General, 01974582 (1998), the Commission upheld the decision of the administrative judge that it was not relevant whether the complainant had actually been harassed. Rather, the issue was the agency's motivation for turning the investigation against the complainant. In articulating a legitimate reason, the agency must do more than merely distinguish the particular facts of a situation. It is required to articulate some meaningful distinction that serves a legitimate purpose of the agency. See Garcia v. USPS, 01830181, 1041/D10 (1983). How the agency learns of the harassment is irrelevant to a determination of whether the agency was on notice of harassing behavior. There is no requirement that the victim report the harassment if management is otherwise aware of it. Complainant v. Secretary of Navy, 0120130704 (2015).

The Agency hasn't met the Burden of Proof requirement under the EEOC's jurisdiction either. Additionally, proceeding with the proposed suspension will eliminate any available affirmative defense the Agency has at its disposal to defend itself against a harassment claim, and further establish pretext in support of the employee's argument in this matter.

C. Charges

Charge 1: Disrespectful Comments towards Supervisors:

Background to Specification 1 and 2: On April 25, 2022, I rebutted an April 19, 2022 reprimand memorandum, alleging it was retaliatory because I received it from Carolyn Nganga-Good nine hours after she learned I followed-up on the status of my pending EEO-complaint. ***See April 25, 2022 email from Rausch.*** My April 25, 2022 email was my intent to oppose Agency actions I believed were retaliation and unlawful under Title VII and EEOC regulations. Accordingly, my April 25, 2022 email meets the EEOC's definition of protected-EEO activity. I carbon copied several Agency management officials in attempt to escalate my concerns of retaliation up the chain of command and meet my responsibility of exhausting any available remedies the Agency is able to offer to resolve the issue. I began doing this after prior incidents have caused me to lose confidence in the LER's ability and willingness to effectively act on and stop harassment. I used the April 25, 2022 email to further oppose preceding DPDB actions I believed to be retaliatory. In this April 25, 2022 email, I decided to oppose additional actions by DPDB that I also believed were done in retaliation in response to protected EEO-activity.

D. Reply to Charge 1, Specifications 1 and 2:

In my April 25, 2022 email, I referenced a Division team building activity, and escape room event called "Murder in Egypt" which DPDB scheduled on March 8, 2022, International Women's Day. ***See attached emails referencing the scheduling of the team activity on March 8, 2022.*** This occurred while two minority women employed within DPDB, Anastasia Timothy and myself, each have two formal EEO complaints pending against the same supervisors within the DPDB, alleging unlawful discrimination and retaliation. At the same time, Egyptian friends showed support for my EEO-activity, which I believe the Agency learned through its unlawful surveillance of me. ***See April 25, 2022 email from Rausch.*** In my April 25, 2022 email, I alleged and asked if that the "Murder in Egypt" team activity was an "attempt to covertly program and threaten my life?" and used to "Threaten to murder me and setup my friends to make it look like they did it?"

Specifications 1 and 2 allege these comments were "inappropriate, unprofessional and disrespectful". I apologize if my statements offended anyone, or came off as disrespectful, it was not my intent to offend anyone. No one at any point following the April 25, 2022 email indicated the statements were disrespectful, up until the July 20, 2022 proposal to suspend. Accordingly, I did not believe anyone found them offensive.

These statements were my intent to oppose what I believe to be unlawful discrimination and retaliation. I expressed opposition to these actions, as required of me by EEOC regulations. I

reasonably believed DPDB's "Murder in Egypt" team activity that occurred on International Women's day, were done in retaliation and an attempt to indirectly threaten me and covertly program me, as evident by my May 2, 2022 EEO complaint and other circumstantial evidence I referenced in my April 25, 2022 email. ***See attached email.*** The Agency has at no point indicated how these specific actions could have been opposed more politely. Accordingly, I believe these specifications are done directly in response to protected-EEO activity, for the purpose of deterring protected-opposition, thus constitute actionable retaliation pursuant to the EEOC's regulations.

This DPDB action of scheduling "Murder in Egypt" on International Women's Day, comes after DPDB's significant failure to act on my reports of harassment, retaliation, electronic surveillance, and deliberate refusal to provide me with an accommodation for a reasonable accommodation I requested in April of 2020. This also occurred a year after Anastasia and I received a "blackmail threat", which no one at the Agency denied that it was in fact a blackmail threat after I confronted the Agency on April 27, 2021. Accordingly, it was reasonable for me to believe the Division would again use opportunities through work activities to indirectly threaten me.

While my communications may have been passionate and assertive, I was under extreme stress at the time, as a result of the Agency's continued electronic surveillance and harassment, and the Agency's failure to correct it, which eventually led to me evacuating my home because I reasonably felt I was in danger. I believe my response was a foreseeable event, given the circumstances, and in accordance with the EEOC's stance on the issue. I have a responsibility to exhaust any mechanisms available to me by the Agency. As LER has refused to investigate my harassment claims in the past, I lost confidence in LER's ability to effectively enforce the Agency's Anti-Harassment policies, so have begun carbon-copying supervisory/management Agency officials instead of relying on LER. I courtesy copied all the supervisors in attempt to exhaust my responsibility to seek remedies available by the Agency.

Accordingly, I believe this suspension memorandum and charge, with these specifications, are an attempt to discourage me from escalating my concerns to other supervisors and managers. Please take notice that I intend to pursue a claim of discrimination and retaliation in response.

Charge 1, Specification 3: In a section of the April 25, 2022 email of protected opposition, I stated in part, *"IF SOMETHING HAPPENS TO ME, during one of my visits to the HRSA building to 'return my old laptop' or other task, at the direction of your orders - rest assured, that I will make it known to appropriate parties well beforehand that you, are not only a witness to these written statements made by me, but also a suspect and accomplice."* The suspension memorandum alleges making these statements to my supervisor is unprofessional and disrespectful.

I apologize if my statements offended anyone, or came off as disrespectful or unprofessional, it was not my intent to offend anyone. No one at any point following the April 25, 2022 email indicated the statements were disrespectful, up until the July 20, 2022 proposed suspension. Accordingly, I did not believe anyone found them offensive.

I had reason to believe I would be in danger while visiting the building. While my communications may have been passionate and assertive, I was under extreme stress at the time, as a result of the Agency's continued electronic surveillance and harassment, and the Agency's failure to correct it, which eventually led to me evacuating my home because I reasonably felt I was in danger. Furthermore, the Agency's refusal to act on my claims of unlawful, electronic surveillance has led me to believe that DPDB supervisors are aware of the electronic surveillance and participate in the Agency's coordinated activities intended to retaliate against my EEO-activity. Additionally, the Agency has been on notice since late 2019/early 2020 that I have needed a reasonable accommodation for panic attacks and anxiety that resulted from its failure to act on harassment. The Agency responded to the matter by refusing to provide me with a reasonable accommodation while justifying the decision with a misrepresented medical review. To date, the Agency has been unable to defend the misrepresented medical review with a legal argument or articulate any admissible facts that support its legitimacy. I believe my reaction was a foreseeable consequence of the Agency's actions. ***See attached denial of RA, employees hearing testimony about David Horowitz's behavior, and January 2020 emails to and from LER.***

These statements by me were an intent to oppose unlawful discrimination and retaliation. If my life is endangered, and susceptible parties partake in actions that encourage the endangerment of my life, then I do plan to hold people accountable to the fullest extent allowed by law, and intend to ensure that it occurs even in my absence. I was simply attempting to provide due notice, and did not mean to be disrespectful. I believe my response was a foreseeable event, given the circumstances, and any reasonable person in my situation would've formed the conclusion that their life was in danger and would react in a similar fashion as I did. Consequently, I believe a fact-finder with adjudicative authority would also conclude that my reaction was a natural consequence of the Agency's actions, if presented with the full facts surrounding the matter.

Background to Charge One, Specification 4 and 5:

On June 9, 2022, Carolyn Nganga-Good threatened me with disciplinary action, which I've alleged was done to pressure me to forgo evidence of retaliatory surveillance on my laptop by June 17, 2022. ***See June 9 email.*** On June 16, 2022, she asked me for a "plan for next steps with your reconsideration case" which I found unusual because we don't routinely get asked for a plan for next steps with regards to disputes cases. I believe her June 16, 2022 follow-up was done to distract me from responding timely to her June 9, 2022 threat to take disciplinary action if the laptop was still in my possession by June 17, 2022. Additionally, I felt frustrated that the Agency was still subjecting me to retaliatory harassment, despite my numerous efforts to escalate my concerns to higher-level management during previous emailed communications. I expressed these frustrations in my reply to Ms. Nganga-Good in effort to oppose actions I reasonably believed were retaliatory. ***See June 21, 2022 reply.***

Reply to Charge One, Specification 4: The suspension memorandum alleges "In a section of [my] email [I] stated, in part, "I barely received OGC's follow-up at 5 pm yesterday, and you are

babysitting my every action” and that defining [the] follow up to an assignment as “babysitting” [my] actions was disrespectful towards [my] supervisor.

I apologize if my statements offended anyone, or came off as disrespectful, it was not my intent to offend anyone. No one at any point following the June 16, 2022 email indicated the statements were disrespectful, up until the July 20, 2022 memorandum. Furthermore, Ms. Nganga-Good’s previous actions that accompanied threats of disciplinary actions, such as the two new deadlines she gave alongside the April 19, 2022 reprimand memorandum, led me to believe that actions taken by her in close-proximity to other threats of discipline, were intended to interfere or distract me from adequately responding to such retaliatory actions. Accordingly, I believed her June 16, 2022 follow-up was retaliatory and an attempt to distract me from adequately responding to her June 9, 2022 threat to take disciplinary action if the laptop was still my possession by June 17, 2022.

While I recognize my communications were not ideal or appropriate, I was under extreme stress at the time, as a result of the Agency’s failure to act on the retaliatory harassment I had been experiencing, to include the electronic surveillance that eventually led to me evacuating my home in April of 2022, because I reasonably felt I was in danger. Additionally, the Agency has been on notice since spring of 2020 that I have needed a reasonable accommodation for panic attacks and anxiety that resulted from its failure to act on harassment. The Agency responded to the matter by refusing to provide me with a reasonable accommodation while justifying the decision with a misrepresented medical review. To date, the Agency has been unable to defend the misrepresented medical review with a legal argument or articulate any admissible facts that support its legitimacy. I believe my reaction was a foreseeable consequence of the Agency’s actions.

Reply to Charge One, Specification 5: This specification alleges “ In another section of [my] email [I] stated, in part, “I find it really sad that the one time BHW decides to promote a minority woman into a supervisory position, they give her the job that no one wants – yours”. [My] comment that [her] appointment to a supervisory position is “sad” and that [her] job is the one “no one wants” was rude, and disrespectful, especially to your supervisor.

I apologize if my statements offended anyone, or came off as disrespectful or rude, it was not my intent to offend anyone. No one at any point following the June 16, 2022 email indicated the statements were disrespectful, up until the July 20, 2022 memorandum. The allegation indicates Ms. Nganga-Good perceived it to be an insult to her promotion to a supervisory position, and that her appointment to a supervisory position was “sad”. To clarify, my statement was in no way intended to reflect my opinion of Ms. Nganga-Good’s qualifications, competencies or capabilities at all.

My statement was intended to reflect my opinion of the circumstances, which I believe are unfair to minority women, to include women of color and unique races or national origin, which encompasses Ms. Nganga-Good. These beliefs are due primarily to BHW’s own Diversity and Inclusion data that was last distributed, which evidences BHW hardly ever promotes women into GS-14 and GS-15 positions, despite there being an almost equal amount of qualified female applicants. Specifically, in 2017, BHW promoted six men and zero women into GS-14 positions,

despite that women made up 45% of qualified candidates (72 of 160 qualified applicants were women). ***See BHW D&I stats for 2017-2018 attached.*** In 2017, BHW also promoted five men and zero women into GS-15 positions, despite that women made up 51% of qualified candidates (140 of 274 qualified applicants were women), I found this to be rather disturbing unsettling upon my discovery of this and began citing the data during the EEO investigation into the complaint I filed in August of 2019. ***See Claudia Rausch affidavit page from previous EEO complaint, attached.*** Accordingly, my assertion that BHW rarely promotes women, and statement of “the one time BHW decides to promote a minority woman into a supervisory position” is based on factual data.

The second part of the statement in which I assert no one would’ve wanted Ms. Nganga-Good’s current position of Policy and Disputes Branch Chief is based on the preceding events described in the general background of this reply, which occurred prior to her appointment to the position.

I believe the that the Agency’s failure to act on my claims of harassment from May 2019 till April 24, 2020 and acts of retaliation to include the April 24, 2020 unlawful denial of a reasonable accommodation, directly or indirectly, set up DPDB’s Policy and Disputes Branch Chief position, to fail. I believe the Agency’s actions between May 2019 and April 24, 2020 created consequences that were foreseeable and avoidable, and unfairly created unmanageable circumstances for any person who would’ve assumed the responsibilities of DPDB’s Policy and Disputes Branch Chief in April of 2020. These consequences are now primarily being dealt with, by Ms. Nganga-Good, who assumed the position of DPDB’s Policy and Disputes (“P&D”) Branch Chief in late April of 2020. I reasonably believe Agency management officials who are primarily responsible in the matter, were not concerned with the consequences of the Agency’s failure to act on harassment, because the management of those consequences could be delegated to the new P&D Branch Chief. This now happens to be Ms. Nganga-Good who so happens to be a woman who also holds the protected status of race and national origin.

The Agency knew that whoever were to assume the position of P&D Branch Chief position in April of 2020, would be counteracting viable claims of discrimination and retaliation, which the Agency has attempted to discredit with a misrepresented medical review. The Agency knew the current P&D Branch Chief would be tasked with additional acts of retaliation against an EEO complainant known to respond. The Agency also likely knew that the new P&D Branch Chief would carry the burden of accruing new EEO claims of retaliation against them and knew that the last branch chief did not want that responsibility, as the circumstances prompted them to leave in January 2020. I believe it is unlikely that the Agency fully informed applicants for the branch chief position of the full circumstances, as it is easy to understand why most people would not want to undertake such tasks. I most certainly, would never have wanted to assume the current role of DPDB’s P&D Branch Chief, if presented with the opportunity and full circumstances referenced above.

Accordingly, I truly find it unfortunate that the rare time BHW promotes a minority woman, such as Ms. Ngnaga-Good, it did so to a position that they knew would be delegated the unpleasant tasks of managing the consequences of a valid EEO-complaint that were already in motion upon Ms. Nganga-Good’s appointment to the position. I reasonably believe that the Agency also knew the position would be tasked to fulfill further acts of retaliation in effort to rid

itself of liability. Personally, I would never want to be in those circumstances. I would never want to defend an unlawful action or use my time to pursue of endless task of retaliating against a complainant like myself, no matter the amount of support and resources available for the task.

My statement was based on the above facts and beliefs, and doesn't reflect an opinion of Ms. Nganga-Good's competency or abilities. I believe it would've been unfair to anyone who would have assumed the position of Policy and Disputes Branch Chief at the time she did. Accordingly, my expression of this was an attempt to express my dissatisfaction with BHW's treatment of minority women, and my inability to understand Ms. Nganga-Good's conformity and cooperation with an organized scheme that only further harms the general population of minority woman as a whole. Accordingly, my statement technically meets the EEOC's definition of protected-opposition and protected-activity. While my communications may have been passionate and assertive, I was under extreme stress at the time, as a result of the Agency's continued electronic surveillance and harassment, and the Agency's failure to correct it, which eventually led to me evacuating my home because I reasonably felt I was in danger. Furthermore, the Agency is aware that I have experienced panic attacks as a result of its failure to act of prior acts of harassment. The Agency responded to the matter by refusing to provide me with a reasonable accommodation while justifying the decision with a misrepresented medical review. To date, the Agency has been unable to defend the misrepresented medical review with a legal argument or articulate any admissible facts that support its legitimacy. I believe my reaction referenced in this specification was a foreseeable consequence of the Agency's actions.

Background for Charge 2, Failure to Follow Instructions, Specifications 1, 2, and 3

On January 18, 2022, the Agency's EEO office acknowledged a new formal complaint I filed on January 1, 2022, alleging the Agency conducted unlawful surveillance to monitor and interfere with my EEO activity. *See letter attached.*

The next day on January 19, 2022, the Agency's OIT office prompted me to refresh my laptop. Given my prior experience with pursuing EEO claims against the Agency, I questioned the legitimacy of the Agency's decision to refresh my laptop and was under the impression the laptop refresh was being done in effort to conceal or tamper with the evidence on it, that prove the allegations I made in the January 1, 2022 EEO complaint. Notably, this is not the first time an Agency employee alleges that the Agency has conducted unlawful surveillance for the purposes of interfering with federally protected activities such as whistleblowing on misconduct, and pursues legal action in response. *See email from OIT attached.*

Through following emailed communications, the Agency was placed on notice that I believed the laptop refresh would interfere with my ability to prove the January 2022 EEO claims. Since then, the Agency has been unable to articulate a specific policy, or responsible Agency employee, who can explain its decision to refresh my laptop, considering that it serves as the primary source of evidence for my current EEO claims.

My beliefs that the refresh of my laptop would result in the compromise of evidence were reasonable, after the Agency went to the extent of misrepresenting a medical opinion for the purposes of discrediting my prior EEO claims of the harm that resulted from its actions and

subsequent request for a reasonable accommodation, that's further explained above. After I refreshed my laptop on April 22, 2022, the OIT employee allowed me to hold on to the old laptop to ensure everything transferred over. I fell sick for a few weeks, and didn't return to the agency building in respect of covid-19 policies, as I feared my condition was contagious. As communications progressed between myself and the Agency about my possession of the laptop, I became convinced that the Agency's primary reason for demanding the old laptop was for the purpose of interfering with the integrity of the EEO Complaint process. I resisted the Agency's demands for the purposes of protecting the integrity of the EEO process and for the providing the evidence on the laptop to a higher authority that is able to adequately address the Agency's unlawful surveillance and interference with the pursuance of EEO complaints.

Accommodatingly, the Agency also refused to investigate my claims of unlawful surveillance while the laptop has been in my possession, which evidences pretext in support of my assertion that the laptop refresh was intended to compromise the integrity of evidence on the laptop in a manner that would support the Agency's position.

Reply to Charge 2, Specification 1: This specification alleges:

"I emailed you on April 13, 2022, the instruction that, "In your last 4/6 email you said that your laptop refresh was to be scheduled by today. Has the refresh been completed? If not, it needs to be done the next day you are on duty." You reported for duty on April 15, 2022, and you did not complete your laptop refresh as instructed. Therefore, you failed to follow instructions."

In addition to the background provided above, the attached email trail between April 13, 2022 and April 25, 2022 evidence I was out sick on April 13, 2022. I later informed Ms. Ngnaga-Good on April 19, 2022 that *"I reached out to IOT about refreshing my laptop, but no one has gotten back to me. I have to go into the building this week for the to troubleshoot my VPN and will ask them about refreshing my laptop then."* I eventually refreshed my laptop on April 22, 2022 and explained on April 25, 2022 that due to the danger I believe I'm risking when I am near the Agency building, more planning is necessary on my part before visiting the Agency building. ***See attached.***

I did not mean to fail to follow instructions. I apologize if my actions were perceived that way, which was not my intent. The refresh of my laptop was dependent on the OIT office, who followed-up with me after April 15, 2022. Furthermore, I also believed these instructions were intended to deter protected EEO-activity and take possession of my old laptop which is the primary source of evidence of my current EEO claims of unlawful surveillance. Any actual resistance from me was an effort to oppose retaliation in my efforts to protect the integrity of the EEO process. It was not my intention to be insubordinate.

Reply to Charge 1, Specification 2: This specification alleges:

"On May 23, 2022, I emailed you the instruction that, "I am instructing you to return your old HRSA laptop to OIT by Noon on Thursday, May 26th and let me know once the

task has been completed. If you happen to be out of the office unexpectedly on May 26th, you must return your laptop the next day you are on duty.“ You reported for duty on May 26, 2022 and you failed to return your old laptop by noon on May 26, 2022 as instructed.”

As recapped in my June 1, 2022 email to Ms. Carolyn Nganga-Good, her May 23, 2022 email requesting the old laptop, was sent to me six and a half business hours after I sent her a May 20, 2022 email, where I conveyed to the contrast between OPM federal regulations and the retaliatory actions I had experienced, to include but not limited to, the increased scrutiny of my work, scrutiny of time and attendance, and increased criticism of my actions. As explained in my June 1, 2022 email, I believe the May 23, 2022 request for the laptop was done in retaliation for protected EEO-activity and whistleblowing activity. ***See June 1, 2022 email attached.***

I did not mean to fail to follow instructions. I apologize if my actions were perceived that way, which was not my intent. Furthermore, I also reasonably believed these instructions were intended to deter protected EEO-activity and take possession of the primary source of evidence of my current EEO claims of unlawful surveillance. Any actual resistance from me was an effort to oppose retaliation in my efforts to protect the integrity of the EEO process. It was not my intention to be insubordinate.

Reply to Charge 2, Specification 3: This specification alleges:

“On June 6, 2022, I emailed you to check the status of your old HRSA-issued laptop’s return to HRSA OIT. You responded via email on June 8, 2022, “No, I didn’t get a chance to. I’ll have to return it during my next in-office day.“ I responded to you via email on June 9, 2022, stating in part, “if the laptop is not returned by COB on June 17th” which was your next scheduled in-office day, the agency would have to take action since you were not following instructions. You called out of work on the June 17, 2022, and I sent you an email reply later that day, instructing you that “If the laptop has not been returned, you are expected to return the laptop by COB the next day you are on duty.“ You failed to return your old HRSA-issued laptop to HRSA’s OIT the next day you were on duty, which was June 21, 2022. Therefore, you failed to follow instructions.

I did not mean to fail to follow instructions. I apologize if my actions were perceived that way, which was not my intent. Furthermore, I also reasonably believed these instructions were intended to deter protected EEO-activity and take possession of the primary source of evidence of my current EEO claims of unlawful surveillance. Any actual resistance from me was an effort to oppose retaliation in my efforts to protect the integrity of the EEO process. It was not my intention to be insubordinate.

As evident by my June 21, 2022 email and recapture of the events which have been undisputed by the agency, I requested clarification regarding the inconsistency of the Agency’s explanations for its actions, and had formed the conclusion, based on prior EEOC decisions, that the Agency’s demand for the laptop was an unlawful order and done in retaliation. ***See June 21, 2022 email attached.***

III. Penalty

In addition to maintaining that the proposed suspension should not be sustained on the merits, I assert, in the alternative, and only to the extent necessary, that the proposed penalty of a suspension of 7 days is not within the bounds of reasonableness in this case. Given the mitigating circumstances surrounding the allegations against me, based upon the standards developed by the U.S. Merit Systems Protection Board in the case of *Douglas v. Veterans Admin.*, 5 M.S.P.R. 280 (1981), which is often used as persuasive guidance for proposed reprimands, the Agency, as explained below, should mitigate the penalty proposed in this case. Many of the Douglas standards are relevant in that they support the mitigation of the proposed suspension.

The twelve Douglas factors relevant to this case are discussed separately.

A. The “Douglas Factors” are as follow:

1. The nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

Here, none of the specifications are based on actual duties contained within the responsibilities of my position. All occurrences happened during acts of protected-opposition in response to retaliation, and not during regular communications that occur within the scope of my position's responsibilities. As explained above, it was not my intent to be disrespectful, rude, or fail to follow instructions. My actions were not done for maliciously or for gain. Furthermore, the specifications in charge one which occurred months ago, have not been repeated since.

2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

Here, all occurrences happened during acts of protected-opposition in response to retaliation, and not during regular communications that occur within the scope of my position's responsibilities. Accordingly, none took place during any of my position's contacts with the public nor impact these factors.

3. The employee's past disciplinary record;

My record is void of a disciplinary actions. The Agency attempts to refer to a previous discussion with my last supervisor, Matt Wiley, that occurred during my December 2019 opposition of discrimination and retaliation, which further evidences that the July 20, 2022 proposed suspension is being done with retaliatory intent, and intended to deter protected EEO-activity.

4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

As evident by prior PMAPS, I have surpassed performance expectations annually and have always gotten along great with my fellow colleagues.

5. The effect of the offense upon the employee's ability to perform at a fully satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;

None of the specifications relate to an actual duty within the scope of my position description, and do not support an Agency argument that I cannot perform at a satisfactory level.

6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

All instances specified by the Agency occurred during my acts of protected-opposition. Accordingly, other employees would likely not have the same mitigating circumstances as I do. As evident by the Agency's response to confirmed allegations of rude behavior by male employees, such as David Horowitz, this penalty is not consistent with the Agency's treatment of other employees, and would further evidence discrimination on the basis of sex and national origin.

7. Consistency of the penalty with any applicable Agency table of penalties;

There isn't a penalty in the Agency table of penalties for protected-opposition.

8. The notoriety of the offense or its impact upon the reputation of the Agency; There is no evidence that the incidents described in the charges would impact the reputation, effectiveness, or efficiency of the Agency, nor has the Agency referenced any specifics.

9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

There was no rules or notices made at all regarding the specifications in Charge one, and I had no way of knowing otherwise that parties perceived my communications during protected-opposition to be rude. Furthermore, as evident by my June 21, 2022 email and recapture of the events which the Agency does not dispute, no rules or policies were provided to me that indicated I was committing an offense, even after I asked. I asked continuously for rules and policies that supported the Agency's decision to remove the laptop from my possession and all my requests went ignored.

10. Potential for the employee's rehabilitation;

I've apologized and the Agency hasn't highlighted an issue of rude or disrespectful comments since those alleged in Charge one. The only allegations of failure to follow instructions involve the Agency's attempts to compromise the integrity of the evidence of my current EEO claims by confiscating the laptop, and are completely unrelated to my actual duties or responsibilities.

11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and

The mitigating circumstances are plentiful, and summarized throughout this entire reply, and include but are not limited to, retaliatory harassment by supervisors, provocation by the Agency's refusal to act on reports of harassment, the Agency's malicious intent to interfere with the proper administration of the EEO process by removing evidence from employees through the guise of a laptop refresh. The laptop refresh and the Agency's need to compromise evidence of unlawful surveillance makes up the totality of its allegations of failure to follow instructions.

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

An alternative sanction would clearly be adequate and effective, as evident by the absence of perceived rude or disrespectful comments since the ones alleged in Charge one.

13. In any case where the charges are premised upon off-duty misconduct, the proposal and decision will describe the relationship (often referred to as the "nexus") between the misconduct and the employee's position.

There is no nexus between the alleged misconduct and my position.

IV. CONCLUSION

Given all the mitigating circumstances, set forth above, I maintain that the Agency should not follow through with the proposed suspension.

Your attention to this matter is greatly appreciated.

Respectfully,

Claudia M.
Rausch -S
Claudia Rausch

Digitally signed by
Claudia M. Rausch -S
Date: 2022.08.24
05:32:32 -04'00'

From: [Moore, Melissa \(HRSA\)](#)
To: [Rausch, Claudia \(HRSA\)](#)
Subject: RE: Decision on Proposed Suspension
Date: Thursday, August 25, 2022 4:17:09 PM
Attachments: [Rausch Decision to Suspend under 752 8 25 2022 Final.pdf](#)

Attached is a copy of the final decision memo for your records.

Melissa B. Moore, MSW, MBA

Deputy Director, Division of Practitioner Data Bank
Bureau of Health Workforce
Health Resources and Services Administration
(301) 945-3332



From: Moore, Melissa (HRSA)
Sent: Thursday, August 25, 2022 2:19 PM
To: Claudia Rausch (HRSA) (CRausch@hrsa.gov) <CRausch@hrsa.gov>
Subject: Decision on Proposed Suspension

Claudia,

Attached you will find my decision memo. Please electronically sign for receipt and send it back to me by 4pm ET today. If you do not send the signed confirmation, I will note that you did not sign and will send you the final updated copy for your records.

Melissa B. Moore, MSW, MBA

Deputy Director, Division of Practitioner Data Bank
Bureau of Health Workforce
Health Resources and Services Administration
(301) 945-3332





DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Resources and Services Administration

Bureau of Health Workforce
Division of Practitioner Data Bank
5600 Fishers Lane
Rockville, MD 20857

Memorandum
Method of Delivery: Email

AT YOUR OWN OPTION, YOU MAY FURNISH THIS NOTICE TO NTEU

Date: August 25, 2022

To: Claudia Rausch
Management Analyst

Subject: Decision on Proposed Suspension- Seven (7) Days

From: Melissa Moore
Deputy Division Director,
Division of Practitioner Data Bank, BHW

On July 20, 2022, Carolyn Nganga-Good, Policy and Disputes Branch Chief, issued you a proposal notice to suspend you from duty without pay from your position of Management Analyst, GS 0343-13 at the Bureau of Health Workforce (BHW), Health Resources and Services Administration (HRSA), in Rockville, Maryland, for a period of seven (7) calendar days for the charges of: 1) Disrespectful Comments towards Supervisor(s) and 2) Failure to Follow Instructions. In the proposal, you were advised of your right to reply to the charges orally and/or in writing, and your right to representation.

I have carefully reviewed the proposal and all the material which formed the basis for the proposal, which was also available for your review, and have given full consideration to the evidence of record. You requested an extension to submit your reply, which was granted. However, I did not receive any reply by the deadline of noon Eastern Time on August 22, 2022 and you did not request any additional extension. On August 24, 2022, you sent me an email with your written reply attached; your reply was untimely. However, in good faith I did review your reply and have included it as part of my consideration. I find the charges and specifications, stated in the proposal are sustained and I have relied on them in making my decision. Further, it is my conclusion

that the sustained charges and specifications fully warrant your suspension as proposed.

Therefore, it is my decision that, in order to promote the efficiency of the service, you will be suspended from duty without pay for a period of seven (7) calendar days. You will serve your suspension from August 29, 2022 through September 4, 2022. You are not to report to your official duty station at any time during this period, or perform any work, and you must return to work on September 6, 2022 (September 5, 2022 is a federal holiday) ready, willing and able to perform your assigned duties. You will be continued in an active duty status at your present grade and salary until the effective date of this suspension. This action is being taken under the provisions of Title 5, Code of Federal Regulations, Part 752, and the terms of applicable sections of the NTEU Collective Bargaining Agreement (CBA).

My analysis and conclusion concerning the specific charges and specifications in the proposal notice follow.

Charge 1 Disrespectful Comments towards Supervisor(s)

Specifications 1, & 2: I find that the evidence supports that you engaged in Disrespectful Comments towards Supervisor(s) on April 25, 2022. In your August 24, 2022 reply, you apologized for your misconduct; however, you continued, in your reply, to defend your actions as appropriate given the circumstances. I find that your behavior as noted in the proposal was disrespectful and your rationale for committing the misconduct was not acceptable. Therefore, I find this specification is supported by a preponderance of the evidence and I have decided to sustain these specifications.

Specification 3: I find that the evidence supports that you engaged in Disrespectful Comments towards Supervisor(s) on June 1, 2022. In your August 24, 2022 reply, you apologized for your misconduct; however, you continued, in your reply, to defend your actions as appropriate given the circumstances. I find that your behavior as noted in the proposal was disrespectful and your rationale for committing the misconduct was not acceptable. Therefore, I find this specification is supported by a preponderance of the evidence and I have decided to sustain this specification.

Specifications 4 & 5: I find that the evidence supports that you engaged in Disrespectful Comments towards Supervisor(s) on June 16, 2022. In your August 24, 2022 reply, you apologized for your misconduct; however, you continued, in your reply, to defend your actions as appropriate given the circumstances. I find that your behavior as noted in the proposal was disrespectful and your rationale for committing the misconduct was not acceptable. Therefore, I find this specification is supported by a preponderance of the evidence and I have decided to sustain these specifications.

Accordingly, based on the specifications I have sustained as noted above, I find a preponderance of evidence supports a conclusion that you committed the charge of

Disrespectful Comments towards Supervisor(s), and I have decided to sustain this charge.

Charge 2 Failure to Follow Instructions

Specification 1: I find that the evidence supports that you engaged in Failure to Follow Instructions on April 13, 2022. In your August 24, 2022 reply, you apologized for your misconduct; however, you continued, in your reply, to defend your actions as appropriate given the circumstances. I find that you failed to follow instructions as noted in the proposal and your rationale for committing the misconduct was not acceptable. Therefore, I find this specification is supported by a preponderance of the evidence and I have decided to sustain this specification.

Specification 2: I find that the evidence supports that you engaged in Failure to Follow Instructions on May 23, 2022. In your August 24, 2022 reply, you apologized for your misconduct; however, you continued, in your reply, to defend your actions as appropriate given the circumstances. I find that you failed to follow instructions as noted in the proposal and your rationale for committing the misconduct was not acceptable. Therefore, I find this specification is supported by a preponderance of the evidence and I have decided to sustain this specification.

Specification 3: I find that the evidence supports that you engaged in Failure to Follow Instructions on June 6, 2022. In your August 24, 2022 reply, you apologized for your misconduct; however, you continued, in your reply, to defend your actions as appropriate given the circumstances. I find that you failed to follow instructions as noted in the proposal and your rationale for committing the misconduct was not acceptable. Therefore, I find this specification is supported by a preponderance of the evidence and I have decided to sustain this specification.

Accordingly, based on the specifications I have sustained as noted above, I find a preponderance of evidence supports a conclusion that you committed the charge of Failure to Follow Instructions, and I have decided to sustain this charge.

Penalty Considerations

In deciding to effect this action, I considered several factors.

I reviewed and concur with the proposing official's penalty considerations.

Additionally, I considered the nature and seriousness of the offense, and its relation to your duties, position and responsibilities. As a GS-13 Management Analyst in the Policy and Disputes Branch, you are responsible for demonstrating professionalism and providing timely, responsive, and respectful customer service that conform to HHS policies and general professional etiquette to all internal and external customers in order to fulfill the Agency's mission. You are also expected to use appropriate judgement in communicating sensitive information and to maintain credibility with internal and

external customers to earn their trust and respect. Your conduct as noted above is concerning and impacts our working relationship and performance of our work duties.

I considered your misconduct as noted above and that it impacts my level of confidence that you will conduct yourself professionally when interacting with internal and external customers, particularly when you do not agree with them, and the impact it may have in fulfilling the Agency's mission.

Furthermore, your allegations of threats to your life based on team building events and routine requests to follow instructions and agency protocols are very serious and could negatively impact the accused.

In your August 24, 2022, written reply, you state that "none of the specifications are based on actual duties contained within the responsibilities of my position." Your comment that acting respectfully and following supervisor instructions is not a requirement in your position is unacceptable as well as concerning. All federal employees are expected to act appropriately when completing their work for HRSA's mission. The fact that you were not interacting with customers is irrelevant and you had been warned previously.

I considered your disrespectful comments towards your supervisors and that it affects your working relationship and causes discord between you and your supervisors as well as others in the Agency. In addition, your failure to follow instructions for the proper refresh and return of your HRSA laptop expended several hours from numerous HRSA staff, to include several staff in the OIT office. The number of times you have been counseled on these issues takes away from the time we need to complete other Agency-related work. I considered the nature of your disrespectful, and unprofessional comments as well as your repeated failure to follow instructions as serious.

I considered the clarity with which you were on notice of the rules that were violated in committing the offense of your disrespectful communications and failure to follow instructions. In your written reply, dated August 24, 2022, you outline that you were unaware that your comments were disrespectful; however, I find that you were provided several expectations from management outlining that your communications were not acceptable. You were issued a counseling memorandum, from your supervisor, on April 19, 2022, which clearly stated, "You responded to my message on April 6th via email outlining your reasons for not completing the assignment which I find unacceptable. In addition to your attempt to rationalize the failure to follow my instructions and negligence in performing this task, you ultimately did not follow my instructions to complete the task by the second deadline of April 6th. Your failure to follow my instructions, lack of urgency in getting your work assignment completed on time, and disregard for the practitioners' plight to get their dispute cases resolved as fast as possible is both concerning and unacceptable. You need to improve on this with immediate effect... Your behavior with regards to failing to follow my instructions is disruptive and inappropriate." This notice also outlined expectations that, "You are

required to follow all supervisory instructions and must conduct yourself in a respectful manner toward your supervisor, coworkers and customers... You are expected to adhere to the HHS Standards of Conduct". You were also put on notice via email by your previous supervisor Matthew Wiley in November 2019, that, "This is not the first time you have made an inappropriate comment towards me as your supervisor... your communications towards me, and all internal and external staff, will be professional and respectful. You are expected to follow the HHS Standard of Conduct (which can be found on here - [OHR Link](#)) in regards to your conduct while in the office." Despite these notices and warnings, you sent several comments to your supervisors that were completely unacceptable, displayed a level of disrespect that is inappropriate in the Federal workplace, and contravened the HHS Standards of Conduct. I considered the numerous notices you received that you must follow instructions to refresh your HRSA-issued laptop and then return your old HRSA laptop and the gravity of your continued refusal to comply. These notices were clear yet you continued with noncompliance. I considered this factor particularly aggravating and a poor use of our time.

I considered mitigating factors related to the offenses outlined above. I considered your length in service as well as your positive performance record in the Federal government. I considered the fact that you apologized for your actions; however, you then continued to defend your actions as proper which shows a lack of remorse. Additionally, I considered the personal stress you outlined in your communications outlined above, as well as the stressors you outlined in your written reply. However, these mitigating factors do not outweigh the gravity of your actions.

I considered the effect your misconduct has upon my confidence in your ability to perform assigned duties. I have lost confidence in your ability to communicate respectfully towards myself and your other supervisors as well as in your ability to follow instructions. I expect to be able to communicate with a GS-13 Analyst with a high level of professionalism and to give an instruction once with compliance. Instead, management spends inordinate time providing you instructions and expectations on refraining from inappropriate communications to no avail. Additionally, you failed to follow the instructions on a routine action, which to date has not been completed. The consequence of your disrespectful comments and failure to follow instructions, is that DPDB is constantly disrupted and I am not able to focus on urgent tasks that are necessary for the Division to support BHW's mission.

I am proposing this action based on evidence and to promote the efficiency of the service. The HHS table of penalties for a first offense of disrespectful comments towards supervisor and failure to follow instructions, is a letter of reprimand to removal. In imposing this lesser disciplinary penalty, I considered the number of charges and mitigating circumstances and I believe a 7 day suspension is appropriate.

This misconduct is unacceptable and will not be condoned or tolerated.

You are hereby notified that any further misconduct will result in more severe disciplinary action being taken against you, up to and including your removal from the Federal service.

Rights

You may challenge this action in one of the following ways: through the negotiated grievance procedures of the HHS-NTEU Collective Bargaining Agreement [SharePoint link](#); through a formal complaint of discrimination filed under the administrative EEO process [SharePoint link](#) ; or an appealable action involving a prohibited personnel practice filed with the MSPB <https://www.mspb.gov/> , to the extent allowable by law. If you elect to file a grievance, the grievance must be filed, in writing within 30 calendar days from the effective date of this action at Step 3. Your right to representation, as outlined in the proposal notice, remains the same.

Your grievance must be directed to:

David Loewenstein
Division Director
DLoewenstein@hrsa.gov
Office: 301-443-8263

If you have any questions concerning this notice, please contact Kelli Lee, Labor and Employee Relations Specialist, at 301-443-4622, or Klee@hrsa.gov, during normal business hours.

You may wish to contact the Employee Assistance Program (EAP). Use of EAP services is voluntary, free, and confidential. The EAP can assist you with a variety of situations. You can contact them on 1-800-222-0364. They are a consultative service that is solution-focused, offering tools and strategies, referrals, and someone to talk it through.

The EAP counselors will not share information with me unless you sign a release of information. Otherwise, the EAP counselors will only confirm that you attended a meeting with them so I can account for your attendance during work hours.

Your supervisor can approve duty time for you to attend EAP sessions up to an hour for each of six sessions (per issue). Please see your supervisor if you would like to request duty time to attend an EAP appointment. If you go to EAP on your own time, you are not required to notify your supervisor.

Melissa Moore

Receipt Acknowledgment

To acknowledge that you have received this notice, please sign and date in the space below. Your signature does not mean that you agree or disagree with this notice and, by signing you will not forfeit any rights to which you are entitled. Your failure to sign will not void the contents of this memorandum.

I acknowledge receipt of this memorandum:

Employee Refused to Sign (8/25/2022)

Claudia Rausch

Date

From: [Nganga-Good, Carolyn \(HRSA\)](#)
To: [Rausch, Claudia \(HRSA\)](#)
Cc: [Lee, Kelli \(HRSA\)](#)
Subject: RE: Laptop Return
Date: Friday, August 12, 2022 12:53:27 PM

Hi Claudia,

This instruction is not unlawful. My instructions were clear and you are expected to comply. Further, you failed to return your old HRSA laptop on your next workday, which was Thursday.

Best,

Carolyn

Carolyn Nganga-Good, DrPH, RN, CPH
Chief, Policy and Disputes Branch
Division of Practitioner Data Bank
Bureau of Health Workforce
Health Resources and Services Administration
5600 Fishers Lane, Rockville, MD 20857
Phone: 301-443-2251
Email: cnganga-good@hrsa.gov
[HRSA/National Practitioner Data Bank](#)



From: Rausch, Claudia (HRSA) <CRausch@hrsa.gov>
Sent: Wednesday, August 10, 2022 5:43 PM
To: Nganga-Good, Carolyn (HRSA) <cnganga-good@hrsa.gov>
Cc: Ganey, Catherine (HRSA) <CGaney@hrsa.gov>; Johnson, Carole (HRSA) <Carole.Johnson@hrsa.gov>; Grossman, Jordan (HRSA) <JGrossman@hrsa.gov>; Espinosa, Diana (HRSA) <DEspinosa@hrsa.gov>; Kadingo, Wendy (HRSA) <WKadingo@hrsa.gov>; Ali, Shontae (HRSA) <SAli@hrsa.gov>; Colbert, Dale (HRSA) <DColbert@hrsa.gov>; Lee, Kelli (HRSA) <KLee@hrsa.gov>; Archeval, Anthony (HRSA) <AArcheval@hrsa.gov>; Perkins, Valerie (HRSA) <VPerkins@hrsa.gov>; Fayese, Olufunmilayo (HRSA) <OFayese@hrsa.gov>; Pradia-Williams, Sheila (HRSA) <SPradia-Williams@hrsa.gov>; Patel, Nisha (HRSA) <NPatel@hrsa.gov>
Subject: RE: Laptop Return

Dear Carolyn,

Please take notice that based on facts and evidence I have reviewed, **I believe your email and instructions are unlawful, and an attempt to cover up fraud** and criminal activity by federal employees and/or federal contractors. Since previous attempts to reach resolution and

communicate these concerns to you and management officials in my chain of command have been unsuccessful, I will pursue legal action to the fullest extent allowed by law.

I also believe your email and actions are intended to deter protected EEO-activity and retaliate against a whistleblower.

For our records, **this email by me is attempt to exercise my rights to protected opposition pursuant to 29 CFR Part 1614 and the NO FEAR ACT.** In effort to exhaust my responsibility to gain resolution through any processes that may be available by the Agency, I have carbon copied additional Agency management officials in attempt to escalate my concerns of retaliation.

Your time and attention to this matter is greatly appreciated.

Respectfully,

Claudia Rausch
Management Analyst
Policy and Disputes Branch
[National Practitioner Data Bank](#)
HHS | HRSA | Bureau of Health Workforce (**BHW**)
☎: 301-945-3059 | ✉: crausch@hrsa.gov

BE INNOVATIVE. HAVE ACCOUNTABILITY. WORK COLLABORATIVELY.

From: Nganga-Good, Carolyn (HRSA) <cnganga-good@hrsa.gov>
Sent: Wednesday, August 10, 2022 5:06 PM
To: Rausch, Claudia (HRSA) <CRausch@hrsa.gov>
Cc: Loewenstein, David (HRSA) <DLoewenstein@hrsa.gov>; Moore, Melissa (HRSA) <MMoore1@hrsa.gov>; Lee, Kelli (HRSA) <KLee@hrsa.gov>; Ganey, Catherine (HRSA) <CGaney@hrsa.gov>; Padilla, Luis (HRSA) <LPadilla@hrsa.gov>
Subject: RE: Laptop Return

Claudia,

You were provided with clear instructions regarding your old HRSA laptop and you are expected to comply.

Best,

Carolyn

Carolyn Nganga-Good, DrPH, RN, CPH
Chief, Policy and Disputes Branch
Division of Practitioner Data Bank
Bureau of Health Workforce

Health Resources and Services Administration
5600 Fishers Lane, Rockville, MD 20857
Phone: 301-443-2251
Email: cnganga-good@hrsa.gov
[HRSA/National Practitioner Data Bank](#)



From: Rausch, Claudia (HRSA) <CRausch@hrsa.gov>
Sent: Wednesday, August 10, 2022 12:42 PM
To: Nganga-Good, Carolyn (HRSA) <cnganga-good@hrsa.gov>
Cc: Loewenstein, David (HRSA) <DLoewenstein@hrsa.gov>; Moore, Melissa (HRSA) <MMoore1@hrsa.gov>; Lee, Kelli (HRSA) <KLee@hrsa.gov>; Ganey, Catherine (HRSA) <CGaney@hrsa.gov>; Padilla, Luis (HRSA) <LPadilla@hrsa.gov>
Subject: RE: Laptop Return

Hi Carolyn,

Sorry for the delay, I've had a lot on my plate.

Please take notice that I believe your actions, including all your requests for the laptop that contains the evidence that proves my current EEO claims, and your threats to take disciplinary action are unlawful, and at the minimum, **rooted in retaliatory animus, intended to deter my protected EEO-activity**, and amount to actionable retaliation. Specifically, **I believe your actions are intended to interfere with the integrity of the EEO process and my right to an impartial investigation into my EEO claims**. Accordingly, I will at the minimum, be pursuing a claim of retaliation and/or retaliatory harassment in response to each of your emails that threatens disciplinary action and/or attempts to remove the laptop with evidence of my EEO claims from my possession while my EEO claims are pending.

To date, every OIT employee I have spoken to regarding this matter has contradicted your statements or refuses to comment on the matter or be involved in the discussion. Subsequently, I reasonably am having a hard time believing that "OIT has advised that [my] old HRSA laptop poses a security risk and could put our HRSA network at risk due to it not having the latest security patches." I believe that a fact-finder with authority to make a decision during the adjudication of my retaliation claims will form the same conclusion, and find that your explanations are simply pretext for discrimination. Any perceived resistance from me in response to such emails, is at most, an attempt by me to oppose unlawful retaliatory actions by you; and not an attempt of misconduct.

I have courtesy copied other supervisors in my chain of command and Kelli Lee's, in effort to escalate my concerns of your retaliatory actions and exhaust whatever available resolutions the Agency is able to provide in response to your actions of retaliatory harassment towards me.

I'll further respond to this matter when I respond to your July 20, 2022 recommendation to suspend me for 7 days. Please stop with your retaliatory harassing emails about the laptop. They appear to be another attempt to distract me from pending issues, to include but not limited to, matters relating to my current EEO complaint.

For our records, this email by me is attempt to exercise my rights to protected opposition pursuant to 29 CFR Part 1614.

Your time and attention to this matter is greatly appreciated.

Respectfully,

Claudia Rausch
Management Analyst
Policy and Disputes Branch
[National Practitioner Data Bank](#)
HHS | HRSA | Bureau of Health Workforce (**BHW**)
☎: 301-945-3059 | ✉: crausch@hrsa.gov

BE INNOVATIVE. HAVE ACCOUNTABILITY. WORK COLLABORATIVELY.

From: Nganga-Good, Carolyn (HRSA) <cnganga-good@hrsa.gov>
Sent: Wednesday, August 10, 2022 11:41 AM
To: Rausch, Claudia (HRSA) <CRausch@hrsa.gov>
Cc: Loewenstein, David (HRSA) <DLoewenstein@hrsa.gov>; Moore, Melissa (HRSA) <MMoore1@hrsa.gov>; Lee, Kelli (HRSA) <KLee@hrsa.gov>
Subject: RE: Laptop Return

Hi Claudia,

I did not hear back from you regarding the status of your old HRSA laptop and I have been notified that it has not been returned as of this morning. OIT has advised that your old HRSA laptop poses a security risk and could put our HRSA network at risk due to it not having the latest security patches. Since you have failed to return your old laptop as instructed, we will have to take additional measures to safeguard HRSA and assure the agency's network is secure as it pertains to your old HRSA laptop. To reiterate, you are not permitted to keep your old HRSA laptop, or to use the laptop and you must return the laptop to HRSA by **COB on your next workday**.

Your continued misconduct is unacceptable and is continuing to cause disruption and additional work for multiple individuals and program areas and cannot be tolerated. I expect your immediate compliance.

Best,

Carolyn

Carolyn Nganga-Good, DrPH, RN, CPH
Chief, Policy and Disputes Branch
Division of Practitioner Data Bank
Bureau of Health Workforce
Health Resources and Services Administration
5600 Fishers Lane, Rockville, MD 20857
Phone: 301-443-2251
Email: cnganga-good@hrsa.gov
[HRSA/National Practitioner Data Bank](#)



From: Nganga-Good, Carolyn (HRSA) <cnganga-good@hrsa.gov>
Sent: Wednesday, August 3, 2022 12:50 PM
To: Rausch, Claudia (HRSA) <CRausch@hrsa.gov>
Cc: Loewenstein, David (HRSA) <DLoewenstein@hrsa.gov>; Moore, Melissa (HRSA) <MMoore1@hrsa.gov>; Lee, Kelli (HRSA) <KLee@hrsa.gov>
Subject: RE: Laptop Return

Hi Claudia,

I am not inhibiting you from reporting any crimes that you deem appropriate to report. I did not mention that I spoke with OIT; I advised you verbally on 7/20/2022 during our one-on-one meeting that I had been notified that you had not returned your old laptop and you were required to return it as instructed. I also notified you that if the old laptop is needed as evidence as you stated, there are proper channels for evidence processing and the investigating agency(ies) would have to request the equipment through the proper channels as needed.

If you have surrendered HRSA's equipment to any individual outside of HRSA's OIT, I need that information immediately so that I can report the equipment location to our OIT. Please provide me this information by 5pm ET today, 8/3/2022.

If you are still in possession of your old laptop, you must return the laptop by 5pm ET tomorrow, 8/4/2022. Please also note, your laptop was not returned by yesterday per my instruction; you are failing to follow instructions, which is considered misconduct.

Best,

Carolyn

Carolyn Nganga-Good, DrPH, RN, CPH
Chief, Policy and Disputes Branch
Division of Practitioner Data Bank
Bureau of Health Workforce
Health Resources and Services Administration
5600 Fishers Lane, Rockville, MD 20857
Phone: 301-443-2251
Email: cnganga-good@hrsa.gov
[HRSA/National Practitioner Data Bank](https://hrsa.gov/National-Practitioner-Data-Bank)



From: Rausch, Claudia (HRSA) <CRausch@hrsa.gov>
Sent: Wednesday, August 3, 2022 9:50 AM
To: Nganga-Good, Carolyn (HRSA) <cnganga-good@hrsa.gov>
Cc: Loewenstein, David (HRSA) <DLoewenstein@hrsa.gov>; Moore, Melissa (HRSA) <MMoore1@hrsa.gov>; Padilla, Luis (HRSA) <LPadilla@hrsa.gov>; Lee, Kelli (HRSA) <KLee@hrsa.gov>; Ganey, Catherine (HRSA) <CGaney@hrsa.gov>; Archeval, Anthony (HRSA) <AArcheval@hrsa.gov>; Kadingo, Wendy (HRSA) <WKadingo@hrsa.gov>; Ali, Shontae (HRSA) <SAli@hrsa.gov>; Perkins, Valerie (HRSA) <VPerkins@hrsa.gov>; Wampler, Valerie (HRSA) <VWampler@hrsa.gov>; Fayese, Olufunmilayo (HRSA) <OFayese@hrsa.gov>
Subject: RE: Laptop Return

Hi Carolyn,

I'm confused. In my June 21, 2022 email (attached), I told you that I was going to turn over the laptop to an authoritative federal law enforcement agency that has the authority to investigate the crimes that are evidenced on the laptop. You at no point replied to me or told me not to. No one included on that email replied to me, or disputed my claims. Accordingly, I thought you were in agreement.

Are you now asking me not to report these crimes? And asking me to turn in the laptop over to you and the Agency instead, so that the crimes evidenced on my laptop are not investigated? Because that's the impression I'm under. You mentioned you spoke to OIT, are they involved with this decision? I have CC'd then so that they may chime in and provide clarification. Since it appears Kelli Lee has been advising you on this, I have CC'd her on this email too, to make sure everyone is on the same page about what has been discussed regarding this laptop.

The crimes I'm referring specifically, are the electronic interference with my EEO activity. Yes, interfering with someone's constitutional rights to pursue a civil action in response to discrimination, is a crime. As I stated in my June 21, 2022 email with cites to the applicable law. Do you disagree, Carolyn? Are you aware of any laws, regulations or policies that form a contradictory conclusion? If you could please clarify that, it may help make sense of what you're asking me to do because I'm

completely confused by your emails.

Are you trying to tell me that you don't want me to report the crimes that are evidenced on my laptop? I thought the HHS code of conduct, HHS HR instructions, and ethics rules governing federal employees, require federal employees to report crime and wrong doing? I have CC'd HR in case they are able to chime in and clarify.

In my June 21, 2022 email, I provided you with the applicable U.S. Criminal Code laws and asked you to let me know if you thought these laws did not apply to these circumstances. But you never replied. So I really don't understand where your current email is coming from. Subsequently, I believe your emails are also rooted in retaliatory intent, and violate the EEOC's federal regulations pursuant to 29 C.F.R. Part 1614; as I explained in my June 21, 2022 email to you. I am CC'ing my higher level supervisors and HR in effort to exhaust my responsibilities to escalate my concerns of retaliation.

I will further address these concerns in my reply to your recent recommended disciplinary action to suspend me.

Thank you very much for your time and attention to this matter.

Respectfully,

Claudia Rausch
Management Analyst
Policy and Disputes Branch
[National Practitioner Data Bank](#)
HHS | HRSA | Bureau of Health Workforce (**BHW**)
☎: 301-945-3059 | ✉: crausch@hrsa.gov

BE INNOVATIVE. HAVE ACCOUNTABILITY. WORK COLLABORATIVELY.

From: Nganga-Good, Carolyn (HRSA) <cnganga-good@hrsa.gov>
Sent: Wednesday, July 20, 2022 4:35 PM
To: Rausch, Claudia (HRSA) <CRausch@hrsa.gov>
Subject: Laptop Return

Claudia,

Also as informed this afternoon, it is important that we comply with HRSA's initiatives regarding their equipment. Since you have not returned your old HRSA laptop to OIT as directed previously, I am instructing you to return it to OIT no later than your next in-office day, July 29th. If you happen to be out of the office unexpectedly on July 29th, you must return your HRSA laptop by close of business on your next scheduled workday (telework or in-office day).

Best,

Carolyn

Carolyn Nganga-Good, DrPH, RN, CPH
Chief, Policy and Disputes Branch
Division of Practitioner Data Bank
Bureau of Health Workforce
Health Resources and Services Administration
5600 Fishers Lane, Rockville, MD 20857
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SENT VIA EMAIL: aarcheval@hrsa.gov , eeocomplaints@hrsa.gov

Date: August 23, 2022

**To: Anthony Archeval
Director of OCRDI, HRSA**

Subject: Agency's August 8, 2022 Partial Acceptance Letter

From: Claudia Rausch, Management Analyst

Dear Mr. Archeval:

In addition to the August 14, 2022 Complainant's Motion for Default Judgment for Failure to Investigate in 180 Days ("Aug. 14, 2022 Motion") and my August 15, 2022 email, I provide the following response to the Agency's August 8, 2022 'Partial Amended Acceptance Letter' ("Aug. 8, 2022 Partial Acceptance Letter").

As a preliminary matter, I never received any kind of acceptance letter from the Agency on this instant complaint prior to August 8, 2022, so it is unclear why it has been labeled 'Partial **Amended** Acceptance Letter'. **No Agency acceptance letter has ever been issued on this instant complaint before August 8, 2022**, so it is not an *Amended* Acceptance Letter.

As further explained below, the manner in which the Agency framed many of the claims is fragmented, incomplete, and misconstrued in a way that portions of the complaint are eliminated. Many are also defined improperly, contain inaccuracies and do not consider the appropriate basis. It appears the Agency used those inaccuracies and inappropriate basis to justify dismissing many of the claims, *after* learning that I had requested a hearing; which I reasonably believe was done with intent to interfere with my rights to the EEO process. The Agency's argument for dismissing the claims is also lacking in authority, as described below.

**I. AUGUST 3, 2022 HEARING REQUEST TERMINATED AGENCY'S
JURISDICTION TO DISMISS CLAIMS, INCLUDING MAY 2, 2022 AND
JUNE 10, 2022 AMENDMENTS**

29 CFR 1614.107(a) very clearly reads "Prior to a request for a hearing in a case, the agency shall dismiss an entire complaint:...". Accordingly, the Agency's August 8, 2022 dismissal of any of the claims is null and void. The EEOC has held that once a complainant requests a hearing, jurisdiction over the complaints shifts to the EEOC district office and an agency has no jurisdiction over a complaint for purposes of dismissing claims once that request has been made. *Stroud v. Secretary of Treasury, 0120073076 (2010)*. Provided that at least 180 days have passed since the filing of the formal complaint, a request for a hearing effectively terminates the agency's jurisdiction over the complaint until the issuance of a decision by an administrative judge. Once the request for a hearing is made, an agency cannot dismiss a complaint. See, e.g., *Mendoza v. Postmaster General, 01A01602 (2002)*; *Isabel v. Postmaster General, 01991991*

(2001.) Reed v. Secretary of Veterans Affairs, 01996435 (2001). This is true even if the hearing request is untimely. Doria R. v. Secretary of the Air Force, 012017058 (2017). Therefore, the Agency does not have jurisdiction to dismiss claims from the May 2, 2022 and June 10, 2022 requests to amend the complaint either.

II. AGENCY'S JUSTIFICATION FOR DISMISSING CLAIMS ARE CONTRARY TO EEOC DECISIONS ON REPRISAL CLAIMS

To the extent the presiding Administrative Judge is willing to consider the Agency's arguments for dismissing the claims, I provide the following rebuttal:

a. Adverse Actions Need Not Qualify As "Ultimate Employment Actions" Or Materially Affect The Terms And Conditions Of Employment To Constitute Retaliation

The Agency attempts to dismiss claims of reprisal from the May 2, 2022 and June 10, 2022 amendments, numbered 14, 18, 19, 20, 22, 30, 31, 32, and 33, arguing that they fail to state an actionable claim of employment discrimination because they don't consist of a harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. The Agency also argues that there is no specific allegation that Complainant was subject to an adverse personnel action as a result of the alleged events. ***Last paragraph on pg. 4 and 2nd paragraph on pg. 5 of Agency's August 8, 2022 letter.***

However, the basis for these claims includes reprisal, specifically retaliatory harassment and unlawful interference with her EEO-activity. ***See Complainant's May 2, 2022 and June 10, 2022 requests to amend the complaint attached to August 14, 2022 Motion.*** The EEOC has held that adverse actions need not qualify as "ultimate employment actions" or materially affect the terms and conditions of employment to constitute retaliation. Lindsey v. United States Postal Service, EEOC Request No. 05980410 (Nov. 4, 1999) (citing EEOC Compliance Manual, No. 915.003 (May 20, 1998)). Instead, the statutory retaliation clauses prohibit any adverse treatment that is based upon a retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity. *Id.* Actions that could have a potential chilling effect or possible future deterrent effect on the exercise of protected rights and the ultimate tool that employees have to enforce equal employment opportunity, state an actionable claim of reprisal. See Larson v. Secretary of Navy, 01983075 (1999).

In Snyder v. Postmaster General, 01A02992 (2000), the EEOC reinforced its position that an employment action, or discrimination in a term or condition of employment is not a prerequisite to a reprisal complaint: *"We further find that the inspection states a claim of reprisal. Under present Commission policy, claimed retaliatory actions which can be challenged are not restricted to those which affect a term or condition of employment; a complainant is protected from any discrimination which is reasonably likely to deter protected activity."* See also Bryant v. Secretary of Navy, 01A03999 (2000) (the retaliation clause prohibits any

“adverse treatment...reasonably likely to deter” the complainant or others from exercising EEO rights).

b. Agency’s Argument That Incidents Took Place Outside of Workplace Has No Bearing On Reprisal Claims and Is Improper As Agency Was On 100% Telework During Incidents

The Agency also dismissed the aforementioned claims, arguing that the incidents are personal in nature involving Complainant’s home, her property or her environment outside of the workplace. However, these facts have no bearing on reprisal claims. See Bryant v. Secretary of Navy, 01A03999 (2000) (*the retaliation clause prohibits any “adverse treatment...reasonably likely to deter” the complainant or others from exercising EEO rights*). As mentioned above, the EEOC has held that *“a complainant is protected from any discrimination which is reasonably likely to deter protected activity”*.

Furthermore, the Agency was at 100% telework due to the COVID pandemic during the incidents and claims brought forth on January 1, 2022 and May 2, 2022. Thus, every Agency employee’s workplace was technically, physically situated at their home. Even if the claims were not based on reprisal, the EEOC has held that the fact that harassment physically occurs off the work premises does not deprive an agency of the jurisdiction to investigate those allegations when the effect of the off-duty contacts is to create “an intolerable influence in the employee’s working conditions.” See, Palacios v. Department of Air Force, 01830134, 1040/A1 (1983). Additionally, Agency activities outside of work involving discriminatory reasons do state a claim. See Scarborough v. Secretary of Army, 01A30005 (2003).

An agency is also liable for the actions of a third party, such as an independent consultant or contractor, when it knows or should have known of the consultant’s or contractor’s conduct and fails to take immediate and appropriate corrective action. If a complainant alleges that an agency has control over the contractor’s actions, she does not fail to state a claim. See Pullano v. Postmaster General, 01A22070 (2003). The EEOC has held that *“[An] agency is not relieved of liability merely because the alleged perpetrator is a contractor, not an agency official*. See Nicholson v. Department of the Navy, EEOC Request No. 05901141 (Dec. 6, 1990).

“Where the employer knows or should have known about the contractor or non-employee’s conduct, but fails to take immediate and corrective action, dismissal for failure to state a claim is inappropriate.” Bautista v. Department of Defense, EEOC Appeal No. 01A12388 (June 12, 2002). *Id.*; and Fauntroy v. Department of the Treasury, EEOC Appeal No. 01995207 (Aug. 18, 2000) (citing 29 C.F.R. 1604.11(e)).

c. Agency’s Dismissal Based on Merits Or Lack of Evidence Is Improper and Cannot Form Basis Of Dismissal Without Investigation

The Agency argues that “Complainant failed to demonstrate a tangible harm as a result of these alleged actions” to justify dismissing the claims. As mentioned above, retaliatory harassment

can be challenged regardless of the level of harm. Additionally, this agency justification for dismissing the claims is improper as it goes to the merits of the claims.

The EEOC has held it is improper for an agency to dismiss a complaint prior to investigation due to lack of evidence. An employee has no burden of proof with respect to allegations made in the complaint, provided the allegations come within EEO purview. The employee's only burden prior to the investigation stage is to demonstrate that the EEO counselor was contacted within 45 days of the alleged discriminatory incident. See, e.g., Parsons v. USPS, 01842083, 1231/D3 (1985) (decided under Part 1613 and applying 30-day time period). An agency may not dismiss a complaint based on an assumption of the facts. If a complainant alleges that she suffered retaliation for previous EEO activity, the agency must investigate that complaint. Carney v. Secretary of Treasury, 01951773 (1996). Also see Chaklos v. Secretary of Army, 01941817, 4131/D13 (1994). For example, an allegation that an agency discriminatorily compelled a complainant to permit agency employees to enter his home and search his computer for classified information as a condition of continued employment states a claim within EEO purview. Such a claim raises an issue of "*adverse treatment sufficient to warrant an investigation on the merits.*" Walls v. Secretary of Army, 01934659, 3915/F14 (1993). Even if the Agency were correct, a challenged employment action that is not "tangible," may still be considered, along with other evidence, as part of a hostile environment or harassment claim, even if it weren't a reprisal claim.

III. CLAIMS ARE FRAGMENTED AND INCOMPLETE, THUS AGENCY'S ARGUMENTS FOR DISMISSAL ARE BASED ON NON-FACTUAL INFORMATION

To the extent that the Agency wishes to use its August 8, 2022 Partial Amended Acceptance Letter and 'Statement of Accepted Claims' to proceed in investigating Complainant's Claims, please note the following discrepancies and inaccuracies:

a. Basis for Claims Includes Pattern of Retaliatory Harassment and National Origin:

In addition to the basis(s) identified by the Agency, I alleged that the Agency has subjected me to a **continuing pattern of retaliatory harassment and interference with EEO-activity** on the basis of reprisal (for **both protected EEO-activity and protected-opposition**) and National Origin (**Mexican-American**).

b. January 1, 2022 Claims are Incomplete and Fragmented¹:

Regarding claims the Agency identified as "one through thirteen", the formal EEO Complaint that the Agency received on January 3, 2022 included 52 claims, not 13. **There is no evidence in the record that supports** the Agency's inaccurate assertion of:

¹ Please note the formal complaint acknowledged by the Agency on January 18, 2022 was filed on Saturday, January 1, 2022, although the Agency received it on Monday, January 3, 2022. The Agency has referred to it as filed on January 3, 2022 in all its correspondence.

*“evidence in the record shows that, on November 17, 2021, Complainant sought counseling to initiate the instant complaint alleging the same issues (i.e. one through thirteen) raised in her previous EEO complaint (HHS-HRSA-1024-2019).” (Pg. 4 of Aug. 8, 2022 Partial Acceptance Letter). See **Exhibit pages 35-47 of the Aug. 14, 2022 Motion. Also Attached.***

On the contrary, the August 27, 2021 EEOC Hearing Transcript of the Judge’s recapture of the HHS-HRSA-1024-2019 claims to be decided on, is void of any of the claims I raised to the Agency’s EEO Office on October 14, 2021 and November 17, 2021. See **Exhibit Pages (“Pgs.”) 2-6 and 44-50 of Aug. 14, 2022 Motion for my initial contacts to the Agency’s EEO Office and the Judge’s Hearing Statements.**

As described in the January 1, 2022 filed EEO Complaint form, I discovered most of the issues between October and December of 2021, after the previous complaint had been processed through the hearing stage. See **August 14, 2022 Motion attachments.** In fact, the Agency’s Aug. 8, 2022 Partial Acceptance Letter acknowledges that many of my alleged issues occurred between September and December 2021, after the August 2021 EEOC Hearing for the previous complaint. So they could not have possibly been raised.

If by chance, similar or identical allegations were raised during the hearing process for the previous complaint, they are part of a continuing pattern of retaliatory harassment that continued to occur throughout the year 2021 after the hearing process and up until now. The basis for my January 1, 2022 claims includes a pattern of retaliatory harassment. The EEOC has held that when an alleged pattern of retaliation continued within the 45-day period preceding the EEO contact as well as thereafter, all allegations must be accepted by the agency for an investigation. *Rabbani v. Secretary of Health & Human Services, 01961782 (1997).*

Additionally, it is well established by the EEOC that when a claim raises harassment or hostile work environment, only one incident needs to be within the 45 days of the EEO Contact. Furthermore, the nature of the claims is electronic interference with the processing of an EEO complaint, and any delay in prosecuting such claims would’ve resulted from the Agency’s actions) Thus, the Agency cannot shift blame to the Complainant for failure to prosecute, when the Agency’s actions caused that failure. The Agency has no grounds for dismissal.

To the extent that the Agency wishes to use its August 8, 2022 Partial Amended Acceptance Letter and ‘Statement of Accepted Claims’ to proceed in investigating fragmented Claims, please note the following discrepancies and inaccuracies:

c. Agency’s Identified Claims 1 Through 13, Are Inaccurate In The Following Ways:

Additions are **bolded** and deletions are ~~crossed~~: As evident by Exhibit pages 46-47, the 13 claims the Agency chose to acknowledge are misstated in the following ways:

Whether the U.S. Department of Health and Human Services (DHHS) discriminated against Complainant and subjected her to a hostile work environment **and retaliatory**

harassment on the basis of sex (female), race (Hispanic), national origin (Mexican-American), disability (mental), and reprisal (prior EEO Activity and protected-opposition) from March 1, 2021 to present. Examples of the alleged discriminatory incidents are the following when:

1. **From March 1, 2021 till April 22, 2022**, Complainant's home Wi-Fi was tampered with, and she experienced a great deal of online connectivity problems during her **current** EEO activity. (See claim no. 1 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).
2. On or around May 2021, a video from Complainant's Ring Security camera was erased **and she was locked out of her Ring Security Account**. (See claim no. 40 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).
3. On June 20, 2021, **Complainant learned that** the Agency hired numerous federal contractors to survey her daily activities and monitor and interfere with her EEO activity. (See claim no. 2 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).
4. Around June 22, 2021, **Complainant learned that** a keylogging software was installed on Complainant's work computer to monitor and log her keystrokes. (See claim no. 3 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).
5. **From August 30, 2021 till April 22, 2022**, the agency invaded Complainant's privacy by **monitoring her EEO activity by** tampering with her personal iPhone, **not allowing her to connect her iPhone's security settings (face ID, fingerprint password)**. (See claim no. 4 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).
6. On September 6, 2021, **Complainant learned that** the Agency synchronized four mobile devices to her government work computer **through the application Microsoft YourPhone**. (See claim no. 5 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).
7. During October and November 2021, **Complainant learned that services of certain individuals were hired-obtained** by the agency **or agents acting on behalf of the Agency** for the purposes of interfering with her EEO activity. (See claim no. 52 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).
8. From October 14, 2021 ~~through December 10, 2021~~ till present, **Complainant learned that** numerous ~~software~~ computer **programs and devices** were installed on Complainant's ~~workstation~~ **laptop for the purposes of monitoring and controlling her EEO activity**.

If the Agency insists on grouping the individual claims into one, please note that Complainant is not complaining about the installation of software or programs on her computer, but about how those programs were installed and used by the Agency to monitor and interfere with EEO-activity.

9. On or around November of 2021, Complainant learned that the apartment next to hers was occupied by a federal contractor, Davit Kukhalashvili, (Also known as David Kay), was hired to investigate, monitor, and interfere with Complainant's computer EEO-activity. (See claim no. 16 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).

10. On November 26 ~~29~~, 2021, a man acting on behalf of the Agency, in a gray Honda Civic with license plate ending in S70 (or 570), followed her home in attempt to intimidate her. (See claim no. 27 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).

11. On November 29, 2021 and December 11 – 13, 2021, unknown individuals entered Complainant's apartment while she was absent and stole her notebook that bookmarked "HRSA password". (See claim no. 28 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).

12. On or around May 2021, a video from Complainant's Ring Security camera was erased and she was locked out of her Ring Security Account. (See claim no. 40 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion). (This claim is a duplicate of number 2, I'm not sure why the Agency listed it twice.)

13. On December 4, 2021, Complainant learned that agents working on behalf of the agency have been posted ~~unspecified notices~~ in her apartment building, and entering her home while she was in the gym. (See No. 45 on Exhibit Pg. 15 of Aug. 14, 2022 Motion).

d. The Agency's Recitation of the Claims Received on January 3rd, Are Missing The Following 40 Claims

14. On October 14, 2021, SWIFT Assist Launcher Extension software was installed on my workstation web browser to control my online EEO activity. (Identified as No. 6 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

15. On October 18, 2021, the regular Microsoft Teams Application was replaced with an alternative program, SQuirreL to allow third parties to monitor and control my work computer and EEO complaint related activities in the background. My work computer was also configured to not allow the regular version of Microsoft Teams to be downloaded on my work computer. (Identified as No. 7 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

16. October and November 2021, I learned that on June 22, 2021, numerous virtual Universal Serial Bus devices were installed on my work computer to allow pairing to Bluetooth devices around my home and monitor my computer EEO activity when I'm not online. *(Identified as No. 8 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
17. October and November 2021, I learned that Universal Plug and Play device and wireless radio controls were installed to monitor my eeo-activity on my work computer. *(Identified as No. 9 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
18. During October and November 2021, I learned that on June 22, 2021, automatic Adobe Document Cloud software updates were disabled, and commands were made to convert some my EEO complaint documents to Japanese. *(Identified as No. 10 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
19. During October and November 2021, I learned that the Agency configured the my work government laptop to pair with a local Bluetooth network that was established around my home to monitor and interfere with my EEO computer activities. *(Identified as No. 11 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
20. During October and November 2021, I learned that Cortana X Device software was installed to notify unknown third parties about my EEO activity. *(Identified as No. 12 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
21. During October and November 2021, I learned that two additional apple IDs had been logged into my personal iCloud account without my authorization. *(Identified as No. 13 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
22. During October and November 2021, I learned that my personal iPhone was cloned, as its location kept appearing in different locations. *(Identified as No. 14 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
23. During October and November 2021, I learned that up to 20 Bluetooth devices were connected with my personal iPhone and work computer without my authorization. *(Identified as No. 14-15 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
24. On November. 1, 2021, I learned that a Microsoft video console, Xbox, was downloaded to my work computer to allow others to view My EEO activity on my work screen. *(Identified as No. 17 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
25. 18. On November 9, 2021, I learned that my work government computer was configured to connect with all available Wi-Fi networks near my apartment through infrared technology. *(Identified as No. 18 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*

26. November 10, 2021, I learned that PowerShell scripts and commands were made on my work computer to monitor and interfere with my use of EEO Hearing exhibits. *(Identified as No. 19 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
27. From November to December 10, 2021, SQuireL software disabled my access to the Agency's Learning Management System (LMS) several times while taking the Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) training. *(Identified as No. 20 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
28. On November 11, 2021, the fire department phone in the stairwell next to my apartment home was configured to intercept and interfere with my EEO online activity. *(Identified as No. 21 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
29. On November 11, 2021, infrared lights were installed in the hallway outside the my apartment door to intercept and interfere with her EEO online activity. *(Identified as No. 22 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
30. On November 11, 2021, agents working on behalf of the Agency entered my home, and my master lock door stopper was tampered with and has become nonfunctional. *(Identified as No. 23 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
31. November 14, 2021, a Nest Thermostat was installed on the walls bordering my home to monitor and control my electric power, and monitor the temperature in my home's secure room that I established to counteract the ongoing interference with my computer EEO activity. *(Identified as No. 24 on Exhibit Pgs. 14-15 of Aug. 14, 2022 Motion).*
32. On November 14, 2021, all the lights in my home shut off, after the temperature in my home's secure room increased. *(Identified as No. 25 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
33. On November 16, 2021, the Agency scheduled my desktop to be migrated to the cloud to monitor and interfere with my EEO activity. *(Identified as No. 26 on Exhibit Pg. 15 of Aug. 14, 2022 Motion).*
34. On December 2, 2021, I heard my next door neighbor screw and position the mounted Bluetooth devices closer to the other side of the wall bordering the secure room in my apartment. *(Identified as No. 29 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
35. On December 3, 2021, my personal android was blocked from using my own personal Wi-Fi, and I was logged out of Proton Virtual Private Network (VPN) without her authorization. *(Identified as No. 30 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*

36. On December 3, 2021, the Agency interfered with my phone calls to T-Mobile, my cell phone carrier company by dropping the calls. *(Identified as No. 31 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
37. On December 6, 2021, attempts were made to change my personal Microsoft account password and my Xfinity/Comcast internet service auto-pay date without my authorization. *(Identified as No. 32 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
38. During October to December 2021, I learned that the Agency mounted Bluetooth devices close to my apartment walls to survey my daily activities and interfere with my EEO activity. *(Identified as No. 33 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
39. On December 10, 2021, the application "Your Phone" was reinstalled on my work computer; although I have at no point been issued a work phone by the Agency. *(Identified as No. 34 Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
40. On December 10, 2021, I learned that hackers working on behalf of the Agency interfered with my phone calls, as my sister's phone calls to me failed to reach me during that entire week. *(Identified as No. 35 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion)*
41. On December 11 and 13, 2021, hackers working on behalf of the Agency did not allow the iPhone messages to certain contacts to go through. *(Identified as No. 36 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
42. On December 13, 2021, I discovered that my radio frequency bug detector, and shielding material covering my front door and coat closet door had been tampered with and broken. *(Identified as No. 37 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
43. On December 13, 2021, I learned that unauthorized charges had been made to my checking account without my authorization. *(Identified as No. 38 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
44. On December 14, 2021, I learned that some personal items kept in my apartment's home foyer had been damaged while I was gone and without my authorization. *(Identified as No. 39 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
45. During November - December 2021, I learned that a gap under the front door to my apartment was created. *(Identified as No. 41 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
46. During November- December 2021, AP learned that my work computer was configured to misconstrue my new EEO filings in this instant complaint by replacing part of my typed words with repetitive phrases. *(Identified as No. 42 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*

47. From December 20 to 31, 2021, I was unable to use my debit card outside my home. When calling my bank to resolve the issue and dispute the unauthorized charges, the call was dropped. *(Identified as No. 43 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
48. During December 2021, I learned that my work computer was configured to replace any PDFs associated with my new EEO complaint, with modified and tampered PDFs. *(Identified as No. 44 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
49. On or around December 10-11th, 2021, agents working on behalf of the Agency entered my home without authorization and tampered with the windows in my home. *(Identified as No. 46 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
50. On November 8, 2021, I learned that six users had access to my government computer through Bluetooth through a program 'filesquirt'. *(Identified as No. 47 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
51. On November 10, 2021, the Microsoft Teams app was uninstalled from my government computer to replace it with "Squirrel", causing me to miss notifications and a meeting. *(Identified as No. 48 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
52. On or around November 11, 2021, my home address was wrongly labeled as "Jerry's apartment" on all available online maps. *(Identified as No. 49 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
53. On December 13, 2021, I learned that shielding material covering the front door of my home and my coat closet door had been tampered with and broken by unknown parties. *(Identified as No. 50 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
54. On June 20, 2021, I learned the services of the following individuals had been obtained for the purposes of monitoring and interfering with my EEO activity: *(Identified as No. 51 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*
- . William Collier, Software Engineer
 - . Gregory Powell
 - . Willsmore Wallace
 - . Matthew Anderson
 - . Lawrence Berkowitz, Network Engineer and licensed radio operator at "government".
 - . Kevin Gardner, Federal Contractor and Network Engineer
 - . Richard Goller, Federal Contractor and Information Security Systems Engineer
 - . Donald Kim, Owner of Hyundai Tucson, license plate MD 4CH2796
 - . Justin Warren, Federal Contractor and IT & Network Engineer
 - . Robert Bittman, Attorney
 - . Salim Abdullah

- . Owner/User(s) of Black Lincoln Navigator, license plate MD 796M313
- . Owner/User of Nissan Altima, license plate GE 9078
- . Owner/User of Hyundai Accent, license plate MD 8EN7108
- . Owner/User of Honda Accord, MD 2DN5478
- . Owner/User of Black BMW, license plate MD 9DL6952

55. During October-November 2021, I learned that the services of the individuals who own or use the following cars had been obtained by the Agency and/or agents acting on behalf of the Agency, for the purposes of interfering with my EEO activity: *(Identified as No. 52 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).*

- . Black Toyota Camry, License Plate Number MD 3DY5009
- . White Kia, license plate number MD 8EA9295
- . Black Acura, License Plate 69047CG
- . Gray Hyundai Tucson, license plate MD 4CH2796
- . White Mitsubishi, license plate MD 3BL7454
- . Black Explorer, license plate MD 791 M795
- . White Toyota Camry, license plate MD 2EM0500
- . Black Mercedes, license plate DC DL6694

e. Agency's Identified Claims from May and June 2022 Amendments Are Inaccurate And Incomplete In The Following Ways:

On May 2, 2022, Complainant amended her complaint to include the following incidents of harassment:

14. On or around February 10, 2022, the fire alarms of Complainant's apartment building stopped working after a contractor conducted an annual inspection.

15. On February 10, 2022, after Complainant's friends of Egyptian descent showed support for Complainant's EEO activity, the agency scheduled a team building activity called "Murder in Egypt" **on International Women's Day**.

16. On March 10, 2022, Complainant's division shared the "Murder in Egypt" team activity to indirectly threaten Complainant.

17. From September 14, 2021 to April 22, 2022, the agency pressured Complainant to refresh her laptop in attempt to remove evidence of unlawful surveillance from Complainant's possession.

18. From May 2021 to January 13, 2022, unauthorized charges were made to Complainant's personal checking account.

19. On February 18, 2022, Complainant's next-door neighbor **in apartment number 1506**, slammed the doors of his apartment after Complainant filed a police report on the unauthorized charges made to her checking account.

20. On or around February 25, 2022, **Complainant discovered** a fraudulent **Capital One** checking account was opened in Complainant's name without her authorization.
21. On February 25, 2022, Carolyn Nganga-Good began scrutinizing Complainant's attendance, conduct, and performance after learning Complainant reported **concerns of unlawful** ~~the agency's~~ actions to Congress and the Federal Bureau of Investigation (FBI).
22. From February 2022 to April 2022, Complainant discovered high electric magnetic fields emanating from her outlets and new travel bag.
23. On April 6, 2022, Carolyn Nganga-Good failed to inform Complainant that her explanation of **extenuating circumstances for not completing assignments on time** was unacceptable, ~~which made leading~~ Complainant to believe otherwise.
24. On April 15, 2022, Complainant's was forced to visit the agency building after HRSA VPN stopped working, locking her out of multiple necessary systems needed to perform her work. Complainant stated the agency is aware of Complainant experiencing panic attacks while at building.
25. On April 19, 2022, Carolyn Nganga-Good issued Complainant a counseling Memorandum **nine hours after learning that Complainant followed-up on her pending EEO-complaint.**
26. On April 19, 2022, Carolyn Nganga-Good unfairly accused Complainant of failure to follow instructions and negligence in performing her work duties.
27. On April 19, 2022, Carolyn Nganga-Good attempted to overwhelm Complainant by giving her **two new** deadlines during the seven days that followed the April 19, 2022 counseling memorandum.
28. On April 19, 2022, Carolyn Nganga-Good refused to consider Complainant's explanation of a family emergency and extenuating circumstances when evaluating Complainant's performance, conduct, and attendance.
29. On April 19, 2022, Carolyn Nganga-Good did not approve Complainant's request for official time until after the time requested had passed.
30. On April 22, 2022, Complainant discovered toxic levels of radiation **were being** aimed at her head while in her bedroom.
31. On April 22, 2022, Complainant discovered toxic fumes **or substances** had been dispersed around her apartment and personal belongings.
32. From February 2022 to April 22, 2022, Complainant discovered fingerprints on her furniture and personal belongings that do not belong to her **inside her home.**

33. From February 2022 to April 22, 2022, Complainant discovered three holes in the wall that borders her apartment and the next-door apartment **numbered 1506**.

On June 10, 2022, Complainant amended her complaint to include the following incidents of harassment:

34. On May 19, 2022, Carolyn Nganga-Good pressured Complainant to take leave and ~~established~~ stricter deadlines to complete tasks.

35. On May 23, 2022, Carolyn Nganga-Good pressured Complainant to take leave **while putting her on notice for attendance**, after expressing her opposition to retaliation.

36. On May 23, 2022, Complainant was pressured to **go to the Agency building** to return her old laptop, which contains direct evidence needed to support her EEO claims **in this instant complaint**.

37. On May 23, 2022, Complainant was pressured to go into the agency building despite the agency being aware of Complainant fearing attacks of toxic radiation near the building.

38. On June 9, 2022, Complainant was pressured to forgo evidence of retaliatory surveillance on her laptop with threats of disciplinary action, and ~~accused~~ **accusations** of not following instructions and insubordination.

Your time and attention to this matter is greatly appreciated.

Respectfully,

Claudia Rausch

From: [Nganga-Good, Carolyn \(HRSA\)](#)
To: [Claudia Marie Rausch](#); [Rausch, Claudia \(HRSA\)](#)
Cc: [Moore, Melissa \(HRSA\)](#)
Subject: RE: Out sick
Date: Tuesday, August 23, 2022 11:15:44 AM
Attachments: [Request for Advanced Leave Request - Form HRSA-711.pdf](#)

Hi Claudia,

Thank you for the notification about your sick leave today. I hope you feel better.

I would also like to provide you follow up notice (last notice sent on May 23, 2022) in regards to your attendance, leave balances, and expectations.

As of 8/20/2022, you had 37.75 hours of annual leave (AL) and 4 hours of sick leave (SL) available, minus the unspecified 16 hours you requested for yesterday and today. As requested in the past, please specify what type of leave you intend to use with your future leave request notifications.

In the event you require advanced leave for an absence, such as leave without pay (LWOP), advance annual or advanced sick leave, you must request the leave using the attached 711 form. I will also require acceptable documentation before I approve any advanced leave request.

I would also like to provide you a few programs that you may avail yourself of, if needed.

FMLA:

For an extended leave of absence due to medical reasons, you may be eligible for leave under the Family and Medical Leave Act (FMLA). If you qualify, you are entitled to up to 12 administrative workweeks of unpaid leave (leave without pay), or you may elect to substitute available paid annual and/or sick leave as appropriate, during any 12 month period for a serious health condition. Medical documentation must be received and reviewed to determine if the leave is for FMLA-qualifying reasons. If you choose to invoke your rights under the FMLA, you must inform me and have your health care provider complete a FMLA form. The appropriate forms can be obtained by contacting FMLArequests@hrsa.gov, or from the OHR SharePoint site:

<https://sharepoint.hrsa.gov/oo/ohr/SitePages/Leave%20and%20Work%20Schedules.aspx>. Please be sure to have the completed forms returned to FMLArequests@hrsa.gov within 15 days of when you invoke your rights.

VLTP:

The Voluntary Leave Transfer Program (VLTP) allows employees to request donated leave from other Federal employees if they do not have enough leave to cover medical emergencies (or family medical emergencies). In order to become a VLTP recipient, you must complete the Voluntary Leave Transfer Program (VLTP) Leave Recipient Application, as well as provide documentation from your physician (or appropriate provider) showing nature, severity and expected duration of the illness. For more information on the Voluntary Leave Transfer Program, please contact your Office/Bureau VLTP representative.

FMLA and VLTP SharePoint:

<https://sharepoint.hrsa.gov/oo/ohr/SitePages/Leave%20and%20Work%20Schedules.aspx>

* For questions, contact Deborah Iyiade, LER Specialist, DIyiade@hrsa.gov

Email: FMLArequests@HRSA.gov

Email: HRSAVLTP@hrsa.gov

Employee Assistance Program (EAP):

EAP is available to counsel employees who may be experiencing personal problems that may be affecting them. If you believe the EAP program may be helpful, you may avail yourself of these services by calling 1-800-222-0364.

Reasonable Accommodations:

Reasonable Accommodations (RA) may be able to provide some accommodation for you. Please contact the office

at, email RA-Request@hrsa.gov or call 301-443-5636.

Or contact ASKHR@hrsa.gov with any questions.

Best,

Carolyn

Carolyn Nganga-Good, DrPH, RN, CPH
Chief, Policy and Disputes Branch
Division of Practitioner Data Bank
Bureau of Health Workforce
Health Resources and Services Administration
5600 Fishers Lane, Rockville, MD 20857
Phone: 301-443-2251
Email: cnganga-good@hrsa.gov
HRSA/National Practitioner Data Bank

-----Original Message-----

From: Claudia Marie Rausch <claudiamarausch@hotmail.com>

Sent: Tuesday, August 23, 2022 9:20 AM

To: Nganga-Good, Carolyn (HRSA) <cnganga-good@hrsa.gov>

Cc: Rausch, Claudia (HRSA) <CRausch@hrsa.gov>; Moore, Melissa (HRSA) <MMoore1@hrsa.gov>

Subject: [EXTERNAL] Re: Out sick

Hi Carolyn,

I'm emailing you to let you know I'm not feeling well and will be out on leave today too.

I'll update ITAS as soon as I log in and am able to.

Thanks,

Claudia Rausch

> On Aug 22, 2022, at 9:50 AM, Nganga-Good, Carolyn (HRSA) <cnganga-good@hrsa.gov> wrote:

>

> Hi Carolyn,

>

> I'm emailing you to let you know I'm not feeling well and will be out on leave today.

>

> I'll update ITAS as soon as I log in and am able to.

>

> Thanks,

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and are confident the content is safe.

From: [Rausch, Claudia \(HRSA\)](#)
To: [Washington, Angela \(HRSA\)](#); [Archeval, Anthony \(HRSA\)](#); [eeocomplaints](#); [Toledo, Oscar \(HRSA\)](#)
Cc: claudiamarauschi@hotmail.com
Subject: RE: Reply to Agency's August 8, 2022 Partial Acceptance Letter
Date: Thursday, August 25, 2022 10:10:00 AM
Sensitivity: Confidential

Thank you for your confirmation of receipt, Ms. Washington.

Please note that my clarification of the appropriately worded claims through the use of " bolded" and "crossed" text didn't transfer over to my copy/paste into the body of the email, and are visible on the PDF I attached to the email below.

Regards,

Claudia Rausch
Management Analyst
Policy and Disputes Branch
National Practitioner Data Bank
HHS | HRSA | Bureau of Health Workforce (BHW)
) : 301-945-3059 | 3: crausch@hrsa.gov

BE INNOVATIVE. HAVE ACCOUNTABILITY. WORK COLLABORATIVELY.

-----Original Message-----

From: Washington, Angela (HRSA) <AWashington@hrsa.gov>
Sent: Wednesday, August 24, 2022 5:07 PM
To: Rausch, Claudia (HRSA) <CRausch@hrsa.gov>; Archeval, Anthony (HRSA) <AArcheval@hrsa.gov>; eeocomplaints <eeocomplaints@hrsa.gov>; Toledo, Oscar (HRSA) <OToledo@hrsa.gov>
Cc: claudiamarauschi@hotmail.com
Subject: RE: Reply to Agency's August 8, 2022 Partial Acceptance Letter
Importance: High
Sensitivity: Confidential

Ms. Rausch-

This is to acknowledge receipt of your e-mail below, once a thorough review of your e-mail is complete this office will respond to your concerns.

Thank you

Angela Washington

Angela Washington | Senior EEO Specialist Health Resources and Services Administration (HRSA) | Office of Civil Rights, Diversity and Inclusion (OCRDI)
5600 Fishers Lane, 14N154 | Rockville, MD | Phone: (301) 443-3619 | Fax: (301) 443-7898 |
AWashington@hrsa.gov

If you have any questions about our services, or are experiencing accessibility issues with an attachment, please email OCRDI@hrsa.gov or call 301-443-5636. Please do not send confidential information or documents to OCRDI@hrsa.gov.

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-----Original Message-----

From: Rausch, Claudia (HRSA) <CRausch@hrsa.gov>

Sent: Wednesday, August 24, 2022 5:49 AM

To: Archeval, Anthony (HRSA) <AArcheval@hrsa.gov>; eeocomplaints <eeocomplaints@hrsa.gov>; Washington, Angela (HRSA) <AWashington@hrsa.gov>; Toledo, Oscar (HRSA) <OToledo@hrsa.gov>

Cc: claudiamarausch@hotmail.com; Rausch, Claudia (HRSA) <CRausch@hrsa.gov>

Subject: Reply to Agency's August 8, 2022 Partial Acceptance Letter

Dear Mr. Archeval:

My apologies for the delay, I was out unexpectedly sick from August 22 to 23rd. Please see attached.

In addition to the August 14, 2022 Complainant's Motion for Default Judgment for Failure to Investigate in 180 Days ("Aug. 14, 2022 Motion") and my August 15, 2022 email, I provide the following response to the Agency's August 8, 2022 'Partial Amended Acceptance Letter' ("Aug. 8, 2022 Partial Acceptance Letter").

As a preliminary matter, I never received any kind of acceptance letter from the Agency on this instant complaint prior to August 8, 2022, so it is unclear why it has been labeled 'Partial Amended Acceptance Letter'. No Agency acceptance letter has ever been issued on this instant complaint before August 8, 2022, so it is not an Amended Acceptance Letter.

As further explained below, the manner in which the Agency framed many of the claims is fragmented, incomplete, and misconstrued in a way that portions of the complaint are eliminated. Many are also defined improperly, contain inaccuracies and do not consider the appropriate basis. It appears the Agency used those inaccuracies and inappropriate basis to justify dismissing many of the claims, after learning that I had requested a hearing; which I reasonably believe was done with intent to interfere with my rights to the EEO process. The Agency's argument for dismissing the claims is also lacking in authority, as described below.

I. AUGUST 3, 2022 HEARING REQUEST TERMINATED AGENCY'S JURISDICTION TO DISMISS CLAIMS, INCLUDING MAY 2, 2022 AND JUNE 10, 2022 AMENDMENTS

29 CFR 1614.107(a) very clearly reads "Prior to a request for a hearing in a case, the agency shall dismiss an entire complaint:...". Accordingly, the Agency's August 8, 2022 dismissal of any of the claims is null and void. The EEOC has held that once a complainant requests a hearing, jurisdiction over the complaints shifts to the EEOC district office and an agency has no jurisdiction over a complaint for purposes of dismissing claims once that request has been made. *Stroud v. Secretary of Treasury*, 0120073076 (2010). Provided that at least 180 days have passed since the filing of the formal complaint, a request for a hearing effectively terminates the agency's jurisdiction over the complaint until the issuance of a decision by an administrative judge. Once the request for a hearing is made, an agency cannot dismiss a complaint. See, e.g., *Mendoza v. Postmaster General*, 01A01602 (2002); *Isabel v. Postmaster General*, 01991991 (2001). *Reed v. Secretary of Veterans Affairs*, 01996435 (2001). This is true even if the hearing request is untimely. *Doria R. v. Secretary of the Air Force*, 012017058 (2017). Therefore, the Agency does not have jurisdiction to dismiss claims from the May 2, 2022 and June 10, 2022 requests to amend the complaint either.

II. AGENCY'S JUSTIFICATION FOR DISMISSING CLAIMS ARE CONTRARY TO EEOC DECISIONS ON REPRISAL CLAIMS

To the extent the presiding Administrative Judge is willing to consider the Agency's arguments for dismissing the claims, I provide the following rebuttal:

a. Adverse Actions Need Not Qualify As "Ultimate Employment Actions" Or Materially Affect The Terms And Conditions Of Employment To Constitute Retaliation

The Agency attempts to dismiss claims of reprisal from the May 2, 2022 and June 10, 2022 amendments, numbered 14, 18, 19, 20, 22, 30, 31, 32, and 33, arguing that they fail to state an actionable claim of employment discrimination because they don't consist of a harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. The Agency also argues that there is no specific allegation that Complainant was subject to an adverse personnel action as a result of the alleged events. Last paragraph on pg. 4 and 2nd paragraph on pg. 5 of Agency's August 8, 2022 letter.

However, the basis for these claims includes reprisal, specifically retaliatory harassment and unlawful interference with her EEO-activity. See Complainant's May 2, 2022 and June 10, 2022 requests to amend the complaint attached to August 14, 2022 Motion. The EEOC has held that adverse actions need not qualify as "ultimate employment actions" or materially affect the terms and conditions of employment to constitute retaliation. *Lindsey v. United States Postal Service*, EEOC Request No. 05980410 (Nov. 4, 1999) (citing EEOC Compliance Manual, No. 915.003 (May 20, 1998)). Instead, the statutory retaliation clauses prohibit any adverse treatment that is based upon a retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity. *Id.* Actions that could have a potential chilling effect or possible future deterrent effect on the exercise of protected rights and the ultimate tool that employees have to enforce equal employment opportunity, state an actionable claim of reprisal. See *Larson v. Secretary of Navy*, 01983075 (1999).

In *Snyder v. Postmaster General*, 01A02992 (2000), the EEOC reinforced its position that an employment action, or discrimination in a term or condition of employment is not a prerequisite to a reprisal complaint: "We further find that the inspection states a claim of reprisal. Under present Commission policy, claimed retaliatory actions which can be challenged are not restricted to those which affect a term or condition of employment; a complainant is protected from any discrimination which is reasonably likely to deter protected activity." See also *Bryant v. Secretary of Navy*, 01A03999 (2000) (the retaliation clause prohibits any "adverse treatment...reasonably likely to deter" the complainant or others from exercising EEO rights).

b. Agency's Argument That Incidents Took Place Outside of Workplace Has No Bearing On Reprisal Claims and Is Improper As Agency Was On 100% Telework During Incidents

The Agency also dismissed the aforementioned claims, arguing that the incidents are personal in nature involving Complainant's home, her property or her environment outside of the workplace. However, these facts have no bearing on reprisal claims. See *Bryant v. Secretary of Navy*, 01A03999 (2000) (the retaliation clause prohibits any "adverse treatment...reasonably likely to deter" the complainant or others from exercising EEO rights). As mentioned above, the EEOC has held that "a complainant is protected from any discrimination which is reasonably likely to deter protected activity".

Furthermore, the Agency was at 100% telework due to the COVID pandemic during the incidents and claims brought forth on January 1, 2022 and May 2, 2022. Thus, every Agency employee's workplace was technically, physically situated at their home. Even if the claims were not based on reprisal, the EEOC has held that the fact that harassment physically occurs off the work premises does not deprive an agency of the jurisdiction to investigate those allegations when the effect of the off-duty contacts is to create "an intolerable influence in the employee's working conditions." See *Palacios v. Department of Air Force*, 01830134, 1040/A1 (1983). Additionally, Agency activities outside of work involving discriminatory reasons do state a claim. See *Scarborough v. Secretary of Army*, 01A30005 (2003).

An agency is also liable for the actions of a third party, such as an independent consultant or contractor, when it knows or should have known of the consultant's or contractor's conduct and fails to take immediate and appropriate corrective action. If a complainant alleges that an agency has control over the contractor's actions, she does not fail to state a claim. See *Pullano v. Postmaster General*, 01A22070 (2003). The EEOC has held that "[An] agency is not relieved of liability merely because the alleged perpetrator is a contractor, not an agency official. See *Nicholson v. Department of the Navy*, EEOC Request No. 05901141 (Dec. 6, 1990).

"Where the employer knows or should have known about the contractor or non-employee's conduct, but fails to take immediate and corrective action, dismissal for failure to state a claim is inappropriate." *Bautista v. Department of*

Defense, EEOC Appeal No. 01A12388 (June 12, 2002). Id.; and Fauntroy v. Department of the Treasury, EEOC Appeal No. 01995207 (Aug. 18, 2000) (citing 29 C.F.R. 1604.11(e)).

c. Agency's Dismissal Based on Merits Or Lack of Evidence Is Improper and Cannot Form Basis Of Dismissal Without Investigation

The Agency argues that "Complainant failed to demonstrate a tangible harm as a result of these alleged actions" to justify dismissing the claims. As mentioned above, retaliatory harassment can be challenged regardless of the level of harm. Additionally, this agency justification for dismissing the claims is improper as it goes to the merits of the claims.

The EEOC has held it is improper for an agency to dismiss a complaint prior to investigation due to lack of evidence. An employee has no burden of proof with respect to allegations made in the complaint, provided the allegations come within EEO purview. The employee's only burden prior to the investigation stage is to demonstrate that the EEO counselor was contacted within 45 days of the alleged discriminatory incident. See, e.g., *Parsons v. USPS*, 01842083, 1231/D3 (1985) (decided under Part 1613 and applying 30-day time period). An agency may not dismiss a complaint based on an assumption of the facts. If a complainant alleges that she suffered retaliation for previous EEO activity, the agency must investigate that complaint. *Carney v. Secretary of Treasury*, 01951773 (1996). Also see *Chaklos v. Secretary of Army*, 01941817, 4131/D13 (1994). For example, an allegation that an agency discriminatorily compelled a complainant to permit agency employees to enter his home and search his computer for classified information as a condition of continued employment states a claim within EEO purview. Such a claim raises an issue of "adverse treatment sufficient to warrant an investigation on the merits." *Walls v. Secretary of Army*, 01934659, 3915/F14 (1993). Even if the Agency were correct, a challenged employment action that is not "tangible," may still be considered, along with other evidence, as part of a hostile environment or harassment claim, even if it weren't a reprisal claim.

III. CLAIMS ARE FRAGMENTED AND INCOMPLETE, THUS AGENCY'S ARGUMENTS FOR DISMISSAL ARE BASED ON NON-FACTUAL INFORMATION

To the extent that the Agency wishes to use its August 8, 2022 Partial Amended Acceptance Letter and 'Statement of Accepted Claims' to proceed in investigating Complainant's Claims, please note the following discrepancies and inaccuracies:

a. Basis for Claims Includes Pattern of Retaliatory Harassment and National Origin:

In addition to the basis(s) identified by the Agency, I alleged that the Agency has subjected me to a continuing pattern of retaliatory harassment and interference with EEO-activity on the basis of reprisal (for both protected EEO-activity and protected-opposition) and National Origin (Mexican-American).

b. January 1, 2022 Claims are Incomplete and Fragmented :

Regarding claims the Agency identified as "one through thirteen", the formal EEO Complaint that the Agency received on January 3, 2022 included 52 claims, not 13. There is no evidence in the record that supports the Agency's inaccurate assertion of:

"evidence in the record shows that, on November 17, 2021, Complainant sought counseling to initiate the instant complaint alleging the same issues (i.e. one through thirteen) raised in her previous EEO complaint (HHS-HRSA-1024-2019)." (Pg. 4 of Aug. 8, 2022 Partial Acceptance Letter). See Exhibit pages 35-47 of the Aug. 14, 2022 Motion. Also Attached.

On the contrary, the August 27, 2021 EEOC Hearing Transcript of the Judge's recapture of the HHS-HRSA-1024-2019 claims to be decided on, is void of any of the claims I raised to the Agency's EEO Office on October 14, 2021 and November 17, 2021. See Exhibit Pages ("Pgs.") 2-6 and 44-50 of Aug. 14, 2022 Motion for my initial contacts to the Agency's EEO Office and the Judge's Hearing Statements.

As described in the January 1, 2022 filed EEO Complaint form, I discovered most of the issues between October and December of 2021, after the previous complaint had been processed through the hearing stage. See August 14,

2022 Motion attachments. In fact, the Agency's Aug. 8, 2022 Partial Acceptance Letter acknowledges that many of my alleged issues occurred between September and December 2021, after the August 2021 EEOC Hearing for the previous complaint. So they could not have possibly been raised.

If by chance, similar or identical allegations were raised during the hearing process for the previous complaint, they are part of a continuing pattern of retaliatory harassment that continued to occur throughout the year 2021 after the hearing process and up until now. The basis for my January 1, 2022 claims includes a pattern of retaliatory harassment. The EEOC has held that when an alleged pattern of retaliation continued within the 45-day period preceding the EEO contact as well as thereafter, all allegations must be accepted by the agency for an investigation. *Rabbani v. Secretary of Health & Human Services*, 01961782 (1997).

Additionally, it is well established by the EEOC that when a claim raises harassment or hostile work environment, only one incident needs to be within the 45 days of the EEO Contact. Furthermore, the nature of the claims is electronic interference with the processing of an EEO complaint, and any delay in prosecuting such claims would've resulted from the Agency's actions) Thus, the Agency cannot shift blame to the Complainant for failure to prosecute, when the Agency's actions caused that failure. The Agency has no grounds for dismissal.

To the extent that the Agency wishes to use its August 8, 2022 Partial Amended Acceptance Letter and 'Statement of Accepted Claims' to proceed in investigating fragmented Claims, please note the following discrepancies and inaccuracies:

c. Agency's Identified Claims 1 Through 13, Are Inaccurate In The Following Ways:

Additions are bolded and deletions are crossed: As evident by Exhibit pages 46-47, the 13 claims the Agency chose to acknowledge are misstated in the following ways:

Whether the U.S. Department of Health and Human Services (DHHS) discriminated against Complainant and subjected her to a hostile work environment and retaliatory harassment on the basis of sex (female), race (Hispanic), national origin (Mexican-American), disability (mental), and reprisal (prior EEO Activity and protected-opposition) from March 1, 2021 to present. Examples of the alleged discriminatory incidents are the following when:

1. From March 1, 2021 till April 22, 2022, Complainant's home Wi-Fi was tampered with, and she experienced a great deal of online connectivity problems during her current EEO activity. (See claim no. 1 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).
2. On or around May 2021, a video from Complainant's Ring Security camera was erased and she was locked out of her Ring Security Account. (See claim no. 40 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).
3. On June 20, 2021, Complainant learned that the Agency hired numerous federal contractors to survey her daily activities and monitor and interfere with her EEO activity. (See claim no. 2 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).
4. Around June 22, 2021, Complainant learned that a keylogging software was installed on Complainant's work computer to monitor and log her keystrokes. (See claim no. 3 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).
5. From August 30, 2021 till April 22, 2022, the agency invaded Complainant's privacy by monitoring her EEO activity by tampering with her personal iPhone, not allowing her to connect her iPhone's security settings (face ID, fingerprint password). (See claim no. 4 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).
6. On September 6, 2021, Complainant learned that the Agency synchronized four mobile devices to her government work computer through the application Microsoft YourPhone. (See claim no. 5 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).

7. During October and November 2021, Complainant learned that services of certain individuals were hired obtained by the agency or agents acting on behalf of the Agency for the purposes of interfering with her EEO activity. (See claim no. 52 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).

8. From October 14, 2021 through December 10, 2021 till present, Complainant learned that numerous software computer programs and devices were installed on Complainant's workstation laptop for the purposes of monitoring and controlling her EEO activity.

If the Agency insists on grouping the individual claims into one, please note that Complainant is not complaining about the installation of software or programs on her computer, but about how those programs were installed and used by the Agency to monitor and interfere with EEO-activity.

9. On or around November of 2021, Complainant learned that the apartment next to hers was occupied by a federal contractor, Davit Kukhalashvili, (Also known as David Kay), was hired to investigate, monitor, and interfere with Complainant's computer EEO-activity. (See claim no. 16 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).

10. On November 26 29, 2021, a man acting on behalf of the Agency, in a gray Honda Civic with license plate ending in S70 (or 570), followed her home in attempt to intimidate her. (See claim no. 27 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).

11. On November 29, 2021 and December 11 – 13, 2021, unknown individuals entered Complainant's apartment while she was absent and stole her notebook that bookmarked "HRSA password". (See claim no. 28 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion).

12. On or around May 2021, a video from Complainant's Ring Security camera was erased and she was locked out of her Ring Security Account. (See claim no. 40 of January 1, 2022 formal complaint on Exhibit Pg. 14 / Pg. 46 of PDF Aug. 14, 2022 Motion). (This claim is a duplicate of number 2, I'm not sure why the Agency listed it twice.)

13. On December 4, 2021, Complainant learned that agents working on behalf of the agency have been posted unspecified notices in her apartment building, and entering her home while she was in the gym. (See No. 45 on Exhibit Pg. 15 of Aug. 14, 2022 Motion).

d. The Agency's Recitation of the Claims Received on January 3rd, Are Missing The Following 40 Claims

14. On October 14, 2021, SWIFT Assist Launcher Extension software was installed on my workstation web browser to control my online EEO activity. (Identified as No. 6 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

15. On October 18, 2021, the regular Microsoft Teams Application was replaced with an alternative program, SQuirreL to allow third parties to monitor and control my work computer and EEO complaint related activities in the background. My work computer was also configured to not allow the regular version of Microsoft Teams to be downloaded on my work computer. (Identified as No. 7 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

16. October and November 2021, I learned that on June 22, 2021, numerous virtual Universal Serial Bus devices were installed on my work computer to allow pairing to Bluetooth devices around my home and monitor my computer EEO activity when I'm not online. (Identified as No. 8 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

17. October and November 2021, I learned that Universal Plug and Play device and wireless radio controls were installed to monitor my eeo-activity on my work computer. (Identified as No. 9 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

18. During October and November 2021, I learned that on June 22, 2021, automatic Adobe Document Cloud software updates were disabled, and commands were made to convert some my EEO complaint documents to Japanese. (Identified as No. 10 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

19. During October and November 2021, I learned that the Agency configured the my work government laptop to pair with a local Bluetooth network that was established around my home to monitor and interfere with my EEO computer activities. (Identified as No. 11 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

20. During October and November 2021, I learned that Cortana X Device software was installed to notify unknown third parties about my EEO activity. (Identified as No. 12 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
21. During October and November 2021, I learned that two additional apple IDs had been logged into my personal iCloud account without my authorization. (Identified as No. 13 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
22. During October and November 2021, I learned that my personal iPhone was cloned, as its location kept appearing in different locations. (Identified as No. 14 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
23. During October and November 2021, I learned that up to 20 Bluetooth devices were connected with my personal iPhone and work computer without my authorization. (Identified as No. 14-15 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
24. On November. 1, 2021, I learned that a Microsoft video console, Xbox, was downloaded to my work computer to allow others to view My EEO activity on my work screen. (Identified as No. 17 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
25. 18. On November 9, 2021, I learned that my work government computer was configured to connect with all available Wi-Fi networks near my apartment through infrared technology. (Identified as No. 18 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
26. November 10, 2021, I learned that PowerShell scripts and commands were made on my work computer to monitor and interfere with my use of EEO Hearing exhibits. (Identified as No. 19 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
27. From November to December 10, 2021, SquirrelL software disabled my access to the Agency's Learning Management System (LMS) several times while taking the Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) training. (Identified as No. 20 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
28. On November 11, 2021, the fire department phone in the stairwell next to my apartment home was configured to intercept and interfere with my EEO online activity. (Identified as No. 21 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
29. On November 11, 2021, infrared lights were installed in the hallway outside the my apartment door to intercept and interfere with her EEO online activity. (Identified as No. 22 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
30. On November 11, 2021, agents working on behalf of the Agency entered my home, and my master lock door stopper was tampered with and has become nonfunctional. (Identified as No. 23 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
31. November 14, 2021, a Nest Thermostat was installed on the walls bordering my home to monitor and control my electric power, and monitor the temperature in my home's secure room that I established to counteract the ongoing interference with my computer EEO activity. (Identified as No. 24 on Exhibit Pgs. 14-15 of Aug. 14, 2022 Motion).
32. On November 14, 2021, all the lights in my home shut off, after the temperature in my home's secure room increased. (Identified as No. 25 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
33. On November 16, 2021, the Agency scheduled my desktop to be migrated to the cloud to monitor and interfere with my EEO activity. (Identified as No. 26 on Exhibit Pg. 15 of Aug. 14, 2022 Motion).
34. On December 2, 2021, I heard my next door neighbor screw and position the mounted Bluetooth devices closer to the other side of the wall bordering the secure room in my apartment. (Identified as No. 29 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

35. On December 3, 2021, my personal android was blocked from using my own personal Wi-Fi, and I was logged out of Proton Virtual Private Network (VPN) without her authorization. (Identified as No. 30 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
36. On December 3, 2021, the Agency interfered with my phone calls to T-Mobile, my cell phone carrier company by dropping the calls. (Identified as No. 31 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
37. On December 6, 2021, attempts were made to change my personal Microsoft account password and my Xfinity/Comcast internet service auto-pay date without my authorization. (Identified as No. 32 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
38. During October to December 2021, I learned that the Agency mounted Bluetooth devices close to my apartment walls to survey my daily activities and interfere with my EEO activity. (Identified as No. 33 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
39. On December 10, 2021, the application "Your Phone" was reinstalled on my work computer; although I have at no point been issued a work phone by the Agency. (Identified as No. 34 Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
40. On December 10, 2021, I learned that hackers working on behalf of the Agency interfered with my phone calls, as my sister's phone calls to me failed to reach me during that entire week. (Identified as No. 35 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
41. On December 11 and 13, 2021, hackers working on behalf of the Agency did not allow the iPhone messages to certain contacts to go through. (Identified as No. 36 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
42. On December 13, 2021, I discovered that my radio frequency bug detector, and shielding material covering my front door and coat closet door had been tampered with and broken. (Identified as No. 37 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
43. On December 13, 2021, I learned that unauthorized charges had been made to my checking account without my authorization. (Identified as No. 38 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
44. On December 14, 2021, I learned that some personal items kept in my apartment's home foyer had been damaged while I was gone and without my authorization. (Identified as No. 39 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
45. During November - December 2021, I learned that a gap under the front door to my apartment was created. (Identified as No. 41 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
46. During November- December 2021, AP learned that my work computer was configured to misconstrue my new EEO filings in this instant complaint by replacing part of my typed words with repetitive phrases. (Identified as No. 42 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
47. From December 20 to 31, 2021, I was unable to use my debit card outside my home. When calling my bank to resolve the issue and dispute the unauthorized charges, the call was dropped. (Identified as No. 43 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
48. During December 2021, I learned that my work computer was configured to replace any PDFs associated with my new EEO complaint, with modified and tampered PDFs. (Identified as No. 44 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
49. On or around December 10-11th, 2021, agents working on behalf of the Agency entered my home without authorization and tampered with the windows in my home. (Identified as No. 46 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).
50. On November 8, 2021, I learned that six users had access to my government computer through Bluetooth through a program 'filesquirt'. (Identified as No. 47 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

51. On November 10, 2021, the Microsoft Teams app was uninstalled from my government computer to replace it with "Squirrel", causing me to miss notifications and a meeting. (Identified as No. 48 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

52. On or around November 11, 2021, my home address was wrongly labeled as "Jerry's apartment" on all available online maps. (Identified as No. 49 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

53. On December 13, 2021, I learned that shielding material covering the front door of my home and my coat closet door had been tampered with and broken by unknown parties. (Identified as No. 50 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

54. On June 20, 2021, I learned the services of the following individuals had been obtained for the purposes of monitoring and interfering with my EEO activity: (Identified as No. 51 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion)..

William Collier, Software Engineer

Gregory Powell

. Willsmore Wallace

. Matthew Anderson

. Lawrence Berkowitz, Network Engineer and licensed radio operator at "government".

. Kevin Gardner, Federal Contractor and Network Engineer . Richard Goller, Federal Contractor and Information Security Systems Engineer . Donald Kim, Owner of Hyundai Tucson, license plate MD 4CH2796 . Justin Warren, Federal Contractor and IT & Network Engineer . Robert Bittman, Attorney . Salim Abdullah . Owner/User(s) of Black Lincoln Navigator, license plate MD 796M313 . Owner/User of Nissan Altima, license plate GE 9078 . Owner/User of Hyundai Accent, license plate MD 8EN7108 . Owner/User of Honda Accord, MD 2DN5478 . Owner/User of Black BMW, license plate MD 9DL6952

55. During October-November 2021, I learned that the services of the individuals who own or use the following cars had been obtained by the Agency and/or agents acting on behalf of the Agency, for the purposes of interfering with my EEO activity: (Identified as No. 52 on Exhibit Pg. 14-15 of Aug. 14, 2022 Motion).

. Black Toyota Camry, License Plate Number MD 3DY5009 . White Kia, license plate number MD 8EA9295 . Black Acura, License Plate 69047CG . Gray Hyundai Tucson, license plate MD 4CH2796 . White Mitsubishi, license plate MD 3BL7454 . Black Explorer, license plate MD 791 M795 . White Toyota Camry, license plate MD 2EM0500 . Black Mercedes, license plate DC DL6694

e. Agency's Identified Claims from May and June 2022 Amendments Are Inaccurate And Incomplete In The Following Ways:

On May 2, 2022, Complainant amended her complaint to include the following incidents of harassment:

14. On or around February 10, 2022, the fire alarms of Complainant's apartment building stopped working after a contractor conducted an annual inspection.

15. On February 10, 2022, after Complainant's friends of Egyptian descent showed support for Complainant's EEO activity, the agency scheduled a team building activity called "Murder in Egypt" on International Women's Day.

16. On March 10, 2022, Complainant's division shared the "Murder in Egypt" team activity to indirectly threaten Complainant.

17. From September 14, 2021 to April 22, 2022, the agency pressured Complainant to refresh her laptop in attempt to remove evidence of unlawful surveillance from Complainant's possession.

18. From May 2021 to January 13, 2022, unauthorized charges were made to Complainant's personal checking account.

19. On February 18, 2022, Complainant's next-door neighbor in apartment number 1506, slammed the doors of his apartment after Complainant filed a police report on the unauthorized charges made to her checking account.

20. On or around February 25, 2022, Complainant discovered a fraudulent Capital One checking account was opened in Complainant's name without her authorization.

21. On February 25, 2022, Carolyn Nganga-Good began scrutinizing Complainant's attendance, conduct, and performance after learning Complainant reported concerns of unlawful the agency's actions to Congress and the Federal Bureau of Investigation (FBI).

22. From February 2022 to April 2022, Complainant discovered high electric magnetic fields emanating from her outlets and new travel bag.

23. On April 6, 2022, Carolyn Nganga-Good failed to inform Complainant that her explanation of extenuating circumstances for not completing assignments on time was unacceptable, which made leading Complainant to believe otherwise.

24. On April 15, 2022, Complainant's was forced to visit the agency building after HRSA VPN stopped working, locking her out of multiple necessary systems needed to perform her work. Complainant stated the agency is aware of Complainant experiencing panic attacks while at building.

25. On April 19, 2022, Carolyn Nganga-Good issued Complainant a counseling Memorandum nine hours after learning that Complainant followed-up on her pending EEO-complaint.

26. On April 19, 2022, Carolyn Nganga-Good unfairly accused Complainant of failure to follow instructions and negligence in performing her work duties.

27. On April 19, 2022, Carolyn Nganga-Good attempted to overwhelm Complainant by giving her two new deadlines during the seven days that followed the April 19, 2022 counseling memorandum.

28. On April 19, 2022, Carolyn Nganga-Good refused to consider Complainant's explanation of a family emergency and extenuating circumstances when evaluating Complainant's performance, conduct, and attendance.

29. On April 19, 2022, Carolyn Nganga-Good did not approve Complainant's request for official time until after the time requested had passed.

30. On April 22, 2022, Complainant discovered toxic levels of radiation were being aimed at her head while in her bedroom.

31. On April 22, 2022, Complainant discovered toxic fumes or substances had been dispersed around her apartment and personal belongings.

32. From February 2022 to April 22, 2022, Complainant discovered fingerprints on her furniture and personal belongings that do not belong to her inside her home.

33. From February 2022 to April 22, 2022, Complainant discovered three holes in the wall that borders her apartment and the next-door apartment numbered 1506.

On June 10, 2022, Complainant amended her complaint to include the following incidents of harassment:

34. On May 19, 2022, Carolyn Nganga-Good pressured Complainant to take leave and established stricter deadlines to complete tasks.

35. On May 23, 2022, Carolyn Nganga-Good pressured Complainant to take leave while putting her on notice for attendance, after expressing her opposition to retaliation.

36. On May 23, 2022, Complainant was pressured to go to the Agency building to return her old laptop, which contains direct evidence needed to support her EEO claims in this instant complaint.

37. On May 23, 2022, Complainant was pressured to go into the agency building despite the agency being aware of

Complainant fearing attacks of toxic radiation near the building.

38. On June 9, 2022, Complainant was pressured to forgo evidence of retaliatory surveillance on her laptop with threats of disciplinary action, and accused accusations of not following instructions and insubordination.

Your time and attention to this matter is greatly appreciated.

Respectfully,

Claudia Rausch

Claudia Rausch
Management Analyst
Policy and Disputes Branch
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BE INNOVATIVE. HAVE ACCOUNTABILITY. WORK COLLABORATIVELY.

From: [Nganga-Good, Carolyn \(HRSA\)](#)
To: [Rausch, Claudia \(HRSA\)](#)
Subject: Telework Agreement ADS & Case #0756
Date: Friday, August 26, 2022 12:12:27 PM
Attachments: [RQ BHW Rausch C 05-22 Safety Checklist.pdf](#)
[RQ BHW Rausch C 05-22 Telework Request and Agreement Form.pdf](#)

Hi Claudia,

Based on your August 24, 2022, email, I wanted to follow up with you to check if your approved alternate duty station (ADS) in your telework agreement paperwork on file (attached) is up to date. All staff must have their ADS approved before they start teleworking from the location. If you need to update your telework agreement, please send it to me for my review by 5pm today.

I also wanted to follow up on the timeline for completing the decision letter for case # 0756. I sent you some feedback on August 8th. Please advise.

Best,

Carolyn

Carolyn Nganga-Good, DrPH, RN, CPH
Chief, Policy and Disputes Branch
Division of Practitioner Data Bank
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